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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1010 and 1012

RIN 3170–AA53

Amendments to Filing Requirements Under the Interstate Land Sales Full Disclosure Act (Regulations J and L)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending Regulations J and L to permit the electronic submission of filings under the Interstate Land Sales Full Disclosure Act. The Bureau is also making non-substantive corrections to regulatory and statutory citations and other technical changes.

DATES: This final rule is effective June 10, 2016.

FOR FURTHER INFORMATION CONTACT: Rachel Ross, Project Analyst; or Amanda Quester, Senior Counsel, Office of Regulations, at 202–435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

This final rule makes a number of procedural and technical amendments to Regulations J and L, which implement the Interstate Land Sales Full Disclosure Act (ILSA). The final rule allows developers to choose whether to submit ILSA filings—including Statements of Record and related amendments, annual reports, and requests to suspend an effective date—on paper or via electronic means designated on the ILSA program page of the Bureau's Web site. Statements of Record submitted to the Bureau electronically in compliance with the final rule need not comply with the requirements in § 1010.102(a), (g), and (h) relating to paper type, tabs, folding, and ordering.

The final rule removes a number of procedural filing requirements under Regulation J, including that developers submit three copies of the final Property Report and two copies of the current geological survey topographic map or maps; that developers use legal size paper for submitting certain filings; that developers submit originals of topographic maps; and that developers bind paper filings. Under the final rule, developers need only submit one copy of documents to the Bureau, may use letter size paper for paper filings, and may submit photocopies of topographic maps in lieu of originals. The final rule also permits developers to choose whether to enclose warnings in a box in the Statement of Record.

The final rule also removes or corrects certain unnecessary and erroneous statutory and regulatory citations, without changing the substance of Regulations J and L. The final rule also updates contact information for the Bureau's Interstate Land Sales Registration Program office, reflecting changes to the Bureau's internal organization, and makes other technical changes.

II. Background

ILSA protects lot purchasers by requiring certain land developers to register their plans and to provide prescribed disclosures to prospective lot purchasers. Developers of subdivisions with 100 or more nonexempt lots must register their plans with the Bureau. These developers must also provide purchasers with a disclosure statement known as a Property Report before a contract of sale is signed.

Prior to July 21, 2011, ILSA was implemented by the U.S. Department of Housing and Urban Development's (HUD's) Interstate Land Sales Registration Program, 24 CFR parts 1710, 1715, and 1720. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended a number of consumer financial protection laws, including ILSA. In addition to various substantive amendments, the Dodd-Frank Act transferred rulemaking authority for ILSA to the Bureau, effective July 21, 2011.[1] The Bureau issued an interim final rule restating the ILSA regulations in December 2011 (Restatement). The Restatement substantially duplicated HUD's Interstate Land Sales Registration Program regulations, 24 CFR parts 1710, 1715, and 1720, making only non-substantive, technical, formatting, and stylistic changes, as the Bureau's Regulation J (Land Registration), 12 CFR part 1010; Regulation K (Purchasers' Revocation Rights, Sales Practices and Standards), 12 CFR part 1011; and Regulation L (Special Rules of Practice), 12 CFR part 1012. In April 2016, the Bureau adopted the Restatement as final without making any changes to the ILSA provisions of the interim final rule.

III. Legal Authority

A. Rulemaking Authority

The Bureau is issuing this final rule pursuant to its authority under the Dodd-Frank Act and ILSA. Section 1061 of the Dodd-Frank Act transferred to the Bureau all of the HUD Secretary's consumer protection functions relating to ILSA.[2] ILSA, as amended, authorizes the Bureau's Director to make, issue, amend, and rescind such rules and regulations as are necessary or appropriate to the exercise of the Director's functions and powers under ILSA.[3] Section 1022(b)(1) of the Dodd-Frank Act also authorizes the Director to prescribe rules "as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws," including ILSA.[4]

B. Procedural Requirements

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required for a

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[1] Public Law 111–203, sections 1061 and 1098A, 124 Stat. 1376, 2038, 2105 (2010).

[2] *Id.* at section 1061(b)(7)(A). Effective on the designated transfer date, July 21, 2011, the Bureau was also granted "all powers and duties" that were vested in the HUD Secretary relating to ILSA on the day before the designated transfer date. *Id.* at section 1061(b)(7)(B). The term "consumer financial protection function" is defined to include "all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines." 12 U.S.C. 5581(a)(1)(A).

[3] 15 U.S.C. 1718; *see also* 15 U.S.C. 1704 (providing that a subdivision may be registered by filing a statement of record, meeting the requirements of ILSA and such rules and regulations as may be prescribed by the Director in furtherance of the provisions of ILSA).

[4] 12 U.S.C. 5512(b)(1); 12 U.S.C. 5481(14) (defining "Federal consumer financial law" to include the "enumerated consumer laws"); 12 U.S.C. 5481(12) (defining "enumerated consumer laws" to include ILSA).

"rule[] of agency organization, procedure, or practice" or if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b). The amendments regarding electronic submission of ILSA filings and other changes to the filing process (such as number of copies required and permitting photocopies of topographic maps) relate solely to agency procedure and practice and, thus, are not subject to the APA's notice and comment requirements. The other changes made in this rulemaking delete outdated cross-references, correct typographical errors, or are similar technical amendments that merely clarify the operation of the regulation. The Bureau believes that there is minimal, if any basis, for substantive disagreement with the technical amendments. As to all of these changes, the Bureau finds that notice and comment are unnecessary.

For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are not required. Therefore, the amendments are adopted in final form. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 601(2), 603(a), 604(a).

IV. Section-by-Section Analysis

A. Regulation J

1010.1 Definitions

1(a) Statutory Terms

The Bureau is making a technical amendment to § 1010.1(a) to correct a citation to the United States Code.

1010.4 Exemptions—General

4(c)

The Bureau is making a technical amendment to § 1010.4(c) to remove a citation to a regulation that does not exist, § 1011.15(f). Prior to the Restatement, 24 CFR 1710.4(c) cited 24 CFR 1715.15(f), which implemented the requirements of 15 U.S.C. 1703(a)(2)(D). HUD eliminated § 1715.15(f) in 1996 but retained the cross-reference.[5] As part of the Restatement, the Bureau substituted § 1011.15(f) for § 1715.15(f), even though § 1011.15(f) does not exist. This technical amendment to remove the citation to § 1011.15(f) does not modify any requirements or obligations under Regulation J.

4(e)

The Bureau is making a technical amendment that changes the name of the Bureau office designated in § 1010.4(e), to reflect changes in the internal organization of the Bureau since the Bureau issued the Restatement in 2011.

1010.5 Statutory Exemptions

The Bureau is making a technical amendment to § 1010.5 to correct two citations to the United States Code.

1010.20 Requirements for Registering a Subdivision—Statement of Record—Filing and Form

20(a) Filing

Section 1010.20(a) provides filing requirements for registering a subdivision. The Bureau is amending this section to update the address to which developers should send Statements of Record because the Bureau will no longer be using a third-party contractor to receive incoming Statements of Record.

In addition to amending the U.S. mail address, the final rule permits submission of Statements of Record via electronic means that are designated on the ILSA program page of the Bureau's Web site, *www.consumerfinance.gov.* The Bureau's Web site specifies uploading, file naming, and other requirements for electronic submissions. Electronic filing of Statements of Record will reduce the burden on filers and facilitate the Bureau's processing of submissions, by reducing costs spent on mailing and eliminating the time in transit for physical mailings and the time required for the Bureau to scan paper submissions. Filers may choose different submission options for each filing, only exercising the electronic option when it is beneficial. Further, the Bureau will achieve cost savings by receiving and processing filings in house rather than through a third-party contractor.

20(b) Form

The Bureau is amending § 1010.20(b) to clarify that electronic filings made pursuant to § 1010.20(a) are not subject to the requirements in § 1010.102(a), (g), and (h) relating to paper type, tabs, folding, and ordering for filings. The Bureau is making this change because it would be difficult or impossible for electronic filings to comply with these paper-specific requirements.

1010.21 Effective Dates

21(b) Suspension of Effective Date by Developer

The Bureau is amending § 1010.21(b) to allow for submission of requests for the suspension of the effective date of a Statement of Record through the electronic means described in § 1010.20(a). The Bureau believes that permitting electronic submission of such requests will reduce the burden on filers and facilitate the Bureau's processing of submissions.

1010.23 Amendment—Filing and Form

23(a) Filing

The Bureau is amending § 1010.23(a) to allow for submission of amendments to Statements of Record through the electronic means described in § 1010.20(a). The Bureau believes that permitting electronic submission of such amendments will reduce the burden on filers and facilitate the Bureau's processing of submissions.

1010.35 Payment of Fees

35(a) Method of Payment

The Bureau is amending § 1010.35(a) to reflect changes in the internal organization of the Bureau and to provide contact information for the relevant Bureau office. The final rule also notes that information regarding the current mailing address or electronic payment procedures can be obtained from the ILSA program page of the Bureau's Web site at *www.consumerfinance.gov.*

1010.102 General Instructions for Completing the Statement of Record

102(a) Paper and Type

Section 1010.102(a) currently requires the use of legal size paper for the Additional Information and Documentation portion of the Statement of Record. The Bureau is amending § 1010.102(a) to allow developers that file on paper to use either legal size or letter size paper for the Additional Information and Documentation portion of the Statement of Record. The Bureau believes that allowing this flexibility could reduce costs for both developers and the Bureau.

102(e) Headings, Subheadings, Captions, Introductory Paragraphs, Warnings

The Bureau is making a technical amendment to § 1010.102(e) to correct a reference to the location of the sample page that shows how headings and subheadings should be used in the Property Report. The Bureau is also removing the requirement in § 1010.102(e) that warnings be enclosed in a box and is instead making the use of the box optional for developers, in order to facilitate compliance.

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[5] 61 FR 13596, 13598 (Mar. 27, 1996).

102(h) Ordering

Section 1010.102(h) requires the Statement of Record to be bound with the Property Report on top (including any documents required to be attached when delivered to the purchaser), followed by the Additional Information and Documentation. The Bureau is amending § 1010.102(h) to remove the requirement that the Statement of Record be bound with the Property Report, while still requiring that the filing be presented in the specified order.[6] The Bureau believes allowing developers to decide whether to bind filings facilitates compliance.

102(m) Final Version of Property Report

Section 1010.102(m) provides general instructions relating to the final version of the Property Report and indicates that the version of the Property Report delivered to prospective lot purchasers must meet many of the same standards as those set forth in the regulations for the Statement of Record. Section 1010.102(m) requires developers to submit to the Bureau three copies of the final Property Report or, if a Property Report in a foreign language is used, three copies of the Property Report together with copies of the translated documents. The Bureau is amending § 1010.102(m) to require submission of only one copy of these documents to the Bureau. The Bureau believes that reducing the number of copies required to be filed could reduce costs for developers and for the Bureau.

The final rule also indicates that if a developer submits a Statement of Record to the Bureau via electronic means pursuant to § 1010.20(a), the version of the Property Report delivered to prospective lot purchasers must meet the same standards that apply to a Statement of Record submitted on paper to the Bureau.

1010.103 Developer Obligated Improvements

(a)

The Bureau is making a technical amendment to § 1010.103(a) to remove one erroneous citation and replace another erroneous citation. Prior to the Restatement, 24 CFR 1710.103(a) cited 24 CFR 1715.15(f), which implemented the requirements of 15 U.S.C. 1703(a)(2)(D). As part of the Restatement, the Bureau replaced § 1715.15(f) with § 1011.15(f) in this paragraph, even though HUD had eliminated § 1715.15(f) in 1996 and § 1011.15(f) does not exist.[7] These technical amendments do not modify any requirements or obligations under Regulation J.

1010.209 Title and Land Use

(f) Supplemental Title Information

(3)

(iv) The Bureau is making a technical amendment to § 1010.209(f)(3)(iv) to remove an erroneous citation to § 1011.15(f). Prior to the Restatement, 24 CFR 1710.209(f)(3)(iv) cited 24 CFR 1715.15(f), which implemented the requirements of 15 U.S.C. 1703(a)(2)(D). As part of the Restatement, the Bureau replaced § 1715.15(f) with § 1011.15(f) in this paragraph, even though HUD had eliminated § 1711.15(f) in 1996 and § 1011.15(f) does not exist. The technical amendment to remove the citation to § 1011.15(f) does not modify any requirements or obligations under Regulation J.

1010.215 Subdivision Characteristics and Climate

(a)

Section 1010.215(a) requires submission of two copies of a current geological survey topographic map or maps from the U.S. Geological Survey and prohibits use of photocopies made by the developer. The final rule amends this section to require submission of only one copy and to eliminate the prohibition on photocopying. The Bureau believes that reducing the number of copies required to be filed could reduce costs for developers and for the Bureau, and anticipates that these changes will facilitate compliance and electronic filing.

1010.310 Annual Report of Activity

(b)

The Bureau is amending § 1010.310(b) to allow for submission of annual reports through the electronic means described in § 1010.20(a). Permitting electronic submission will reduce the burden on filers and facilitate the Bureau's processing of submissions.

1010.500 General

(a)

The Bureau is making a technical amendment to § 1010.500(a) to remove duplicated words.

1010.503 Notice of Certification

(a)

The Bureau is making a technical amendment to § 1010.503(a), which currently erroneously refers to § 1010.501(a) or (b) as the provisions pursuant to which a State may qualify for certification. Prior to the Restatement, 24 CFR 1710.503(a) referred to 24 CFR 1710.501(a) or (b), which implemented the requirements of 15 U.S.C. 1708(a). As part of the Restatement, the Bureau replaced § 1710.501 with § 1010.501 in this paragraph, even though HUD had removed § 1710.501 from codification in 1996[8] and § 1010.501 does not exist. Because § 1010.501 does not exist, the final rule substitutes a reference to subpart C of part 1010, which is the subpart pursuant to which a State may qualify for certification. This technical amendment does not alter or change the substance of the requirements of § 1010.503(a).

1010.504 Cooperation Among Certified States and Between Certified States and the Director

(a)

The Bureau is making a technical amendment to § 1010.504(a), which currently erroneously refers to § 1010.502 as the provision pursuant to which an Application for Certification of State Land Sales Program is filed. Because § 1010.502 does not exist, the final rule substitutes a reference to subpart C of part 1010, which is the subpart pursuant to which an Application for Certification of State Land Sales Program is filed. This technical amendment does not alter or change the substance of the requirements of § 1010.504(a).

(c)

The Bureau is making a technical amendment to § 1010.504(c) to remove a duplicated word.

1010.505 Withdrawal of State Certification

The Bureau is making a technical amendment to the title of § 1010.505 to remove a duplicated word.

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[6] As noted above in the section-by-section discussion of § 1010.20(a) and (b), electronic filings made pursuant to § 1010.20(a) are not subject to the requirements in § 1010.102(a), (g), and (h) relating to paper type, tabs, folding, and ordering for filings but must comply with instructions for electronic filing designated on the ILSA program page of the Bureau's Web site.

[7] 61 FR 13596, 13598 (Mar. 27, 1996).

[8] 61 FR 13596, 13597 (Mar. 27, 1996).

1010.506 State/Federal Filing Requirements

(a)(1)

The Bureau is making a technical amendment to § 1010.506(a)(1), which currently erroneously refers to § 1010.501 as the provision under which the Director certifies States. Because § 1010.501 does not exist, the final rule substitutes a reference to subpart C of part 1010, which is the subpart under which the Director certifies States. This technical amendment does not alter or change the substance of the requirements of § 1010.506(a)(1).

(a)(2)

The Bureau is making a technical amendment to § 1010.506(a)(2) to remove a duplicated word.

(f)

The Bureau is making a technical amendment to § 1010.506(f) to remove a duplicated word.

1010.507 Effect of Suspension or Withdrawal of Certification Granted Under § 1010.501(a): Full Disclosure Requirement

The Bureau is making technical amendments to the title of § 1010.507 and to § 1010.507(a), which currently erroneously refer to § 1010.501(a) as a provision under which the Director certifies States. Prior to the Restatement, 24 CFR 1710.507 cited 24 CFR 1710.501(a), which implemented the requirements of 15 U.S.C. 1708(a)(1). As part of the Restatement, the Bureau replaced § 1710.501(a) with § 1010.501(a) in this paragraph, even though HUD had removed § 1710.501 from codification in 1996 and § 1010.501(a) does not exist. The Bureau is now replacing the erroneous citations to § 1010.501(a) with citations to 15 U.S.C. 1708(a)(1). These technical amendments do not alter or change the substance of the requirements of § 1010.507.

1010.508 Effect of Suspension of Certification Granted Under § 1010.501(b): Sufficient Protection Requirement

The Bureau is making technical amendments to the title of § 1010.508 and to § 1010.508(a), which currently erroneously refer to § 1010.501(b) as a provision under which the Director certifies States. Prior to the Restatement, 24 CFR 1710.508 cited 24 CFR 1710.501(b), which implemented the requirements of 15 U.S.C. 1708(a)(2). As part of the Restatement, the Bureau replaced § 1710.501(b) with § 1010.501(b) in this section, even though HUD had removed § 1710.501 from codification in 1996 and § 1010.501(b) does not exist. The Bureau is now replacing the erroneous citations to § 1010.501(b) with citations to 15 U.S.C. 1708(a)(2). These technical amendments do not alter or change the substance of the requirements of § 1010.508.

1010.552 Previously Accepted State Filings

(a)

The Bureau is making a technical amendment to § 1010.552 to replace an erroneous citation to § 1011.15(f) with a citation to 15 U.S.C. 1703(a)(2)(D). Prior to the Restatement, 24 CFR 1710.552(a) cited 24 CFR 1715.15(f), which implemented the requirements of 15 U.S.C. 1703(a)(2)(D). As part of the Restatement, the Bureau replaced § 1715.15(f) with § 1011.15(f) in this section, even though HUD had eliminated § 1715.15(f) in 1996 and § 1011.15(f) does not exist. This technical amendment does not modify any requirements or obligations under Regulation J.

Appendix A to Part 1010

This Appendix provides Standard and Model Forms and Clauses. The Bureau is making a technical amendment to section III, Sample Lot Information Statement and Sample Receipt—§ 1010.15(b)(11), to provide contact information for the relevant Bureau office. The Bureau is also making a technical amendment to section VIII, Property Report for Statement of Record—§ 1010.100(b), to harmonize a heading label with the requirements of § 1010.107.

B. Regulation L

1012.35 Prefiling Assistance

The Bureau is making a technical amendment to § 1012.35 to reflect changes in the internal organization of the Bureau and to provide contact information for the relevant Bureau office.

1012.40 Processing of Filings

(a)

The Bureau is making a technical amendment to § 1012.40(a) to reflect changes in the internal organization of the Bureau.

1012.236 Notice of Proceedings To Withdraw a State's Certification

(b)

Section 1012.236(b) refers to a determination by the Director pursuant to § 1010.505 that a State's laws, regulations, and the administration thereof, taken as a whole, no longer meet the requirements of § 1010.501. The Bureau is making a technical amendment to § 1012.236(b) to conform the language of § 1012.236(b) to that of § 1010.505. The final rule substitutes subpart C of part 1010 for § 1010.501, which does not exist. This technical amendment does not alter or change the substance of the requirements of § 1012.236(b).

V. Effective Date

The Administrative Procedure Act generally requires that rules be published not less than 30 days before their effective dates.[9] This final rule is effective 30 days after May 11, 2016.

VI. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

In developing this final rule, the Bureau has considered potential benefits, costs, and impacts and has consulted, or offered to consult with, HUD and HUD's Office of the Inspector General, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.[10]

The Bureau is amending Regulation J to allow ILSA filings by electronic means designated on the Bureau's Web site or via physical mail. The final rule exempts electronic filings from certain requirements in § 1010.102 relating to paper type, folding, and ordering. The Bureau is also amending Regulation J to require filings submitted by mail to be sent to the Bureau directly, rather than to a third-party service provider. The existing contract with the service provider will not be renewed. The Bureau is also making certain technical changes to Regulations J and L.

This analysis focuses on the benefits, costs, and impacts of the key provision of the final rule, the new electronic filing option.[11] The Bureau is evaluating the benefits, costs, and impacts of the final rule against the current regulation.

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[9] 5 U.S.C. 553(d).

[10] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) of the Dodd-Frank Act directs the Bureau to consult with appropriate prudential regulators or other Federal agencies regarding consistency with prudential, market, or systemic objectives that those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind that does not establish standards of conduct is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and has consulted, or offered to consult, as indicated.

B. Potential Benefits and Costs to Consumers and Covered Persons

The current rule directs filers [12] to submit ILSA filings by physically mailing paper copies to the Bureau in care of a service provider. In addition, the Bureau has in practice permitted submissions by physically-mailed digital media.

If filers wish to continue physically mailing their paper submissions after this rulemaking, they may do so using the address provided in the final rule for the Bureau. Filers that continue to submit paper filings would generally incur no costs as a result of the rule. Based on the expected volume of paper submissions, the Bureau believes that the processing time for paper filings is unlikely to change from the current processing time. Additionally, the Bureau has taken several steps to reduce the burden on paper filers, by, for example, permitting copies of topographic maps to be submitted instead of the original; eliminating the requirement that developers submit multiple copies of the Property Report to the Bureau; and relaxing paper size, binding, and other formatting requirements for Bureau submissions.

Two primary categories of filers may take advantage of electronic filing: Filers that switch from paper filing to electronic filing and covered persons that currently submit filings by physically-mailed digital media. Filers that switch from paper submissions to the new electronic means of submission may incur benefits and costs, but presumably will only adopt the new means when it is advantageous to them. Filers that currently submit filings by physically-mailed digital media will now file via either the electronic means designated by the Bureau or physically-mailed paper submissions. Filers may choose different submission options for each filing, only exercising the electronic option when it is beneficial.

Electronic filing may reduce preparation time for some filers and offer faster processing of their submissions. Electronic filing will eliminate the time in transit for physical mailings, the time required for the Bureau to scan paper submissions, and the processing time added by necessary security precautions taken for mailed digital media submissions. In addition, the new means may benefit filers by reducing costs spent on printing paper submissions and mailing both paper and physically-mailed digital media submissions, as well as the costs spent on the digital media devices.

For filers who currently physically mail digital media to the Bureau, the costs of switching to direct electronic submission should be negligible because those submissions are already formatted and saved electronically. The Bureau does not possess any data that would enable it to quantify these costs or savings, but informal outreach indicates that many filers would prefer the electronic option over physical mailings.

This procedural rulemaking is expected to have negligible impact on consumers.

C. Impact on Depository Institutions With No More Than $10 Billion in Assets

This final rule will affect land developers and law firms and others making filings on behalf of land developers. Depository institutions with no more than $10 billion in assets will not be impacted by this final rule.

D. Impact on Access to Credit

The Bureau does not expect this final rule to affect consumers' access to credit. The scope of the rulemaking is limited to filings related to land development, which are not directly related to credit access.

E. Impact on Rural Areas

The Bureau does not believe that this final rule will have a unique impact on consumers in rural areas. Any potential effects on consumers, expected to be negligible in all cases, would be indirect effects passed through by developers, and the impact on developers is not expected to vary by geographic area.

VII. Paperwork Reduction Act

This final rule amends Regulations J and L, 12 CFR parts 1010 and 1012, to allow developers to submit ILSA filings electronically and make other technical adjustments. The Bureau's OMB control number for collections under ILSA is 3170–0012. This rule does not add any new collections and does not remove any of the existing collections, although it does reduce the number of copies required to be submitted to the Bureau for certain paper filings. Therefore, the impact of this new rule on the Paperwork Reduction Act burden associated with ILSA depends largely on the extent to which developers switch from paper submissions to electronic submissions. Currently, only 10 percent of ILSA information collections received by the Bureau are done in electronic form. If all submissions become electronic, the estimated savings in ongoing Paperwork Reduction Act burden could be up to 972 hours and 15,000 pages of paper per year. The one-time burden associated with a new method of submission is expected to be minimal because many documents are already created electronically for business reasons.

List of Subjects in 12 CFR Parts 1010 and 1012

Land registration; Reporting requirements; Certification of substantially equivalent State law; Purchasers' revocation rights; Unlawful sales practices; Advertising disclaimers; Filing assistance; and Adjudicatory proceedings.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation J, 12 CFR part 1010, and Regulation L, 12 CFR part 1012, as set forth below:

PART 1010—LAND REGISTRATION (REGULATION J)

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

■ 2. Section 1010.1 is amended by revising paragraph (a) to read as follows:

§ 1010.1 Definitions.

(a) *Statutory terms.* All terms are used in accordance with their statutory meaning in 15 U.S.C. 1701, unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

* * * * *

■ 3. Section 1010.4 is amended by revising paragraphs (c) and (e) to read as follows:

§ 1010.4 Exemptions—general.

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[11] The final rule also addresses a number of typographic and other non-substantive issues in Regulations J and L by: (1) Correcting or removing incorrect regulatory and statutory cross-references, (2) updating contact information for the Bureau, and (3) removing inconsistent language regarding certain formatting requirements. These changes increase the accuracy and consistency of the regulations' language, but are expected to have negligible impacts on consumers or covered persons. As noted below in the discussion of the potential costs and benefits, the final rule also offers developers additional options with respect to the form of certain filings when submitted via paper.

[12] For purposes of this analysis, "filer" refers to a developer or owner within the meaning of ILSA. Developers or owners within the meaning of ILSA are typically not covered persons within the meaning of the Dodd-Frank Act. Accordingly, the Bureau believes that the final rule will have minimal if any impact on covered persons. Nevertheless, to inform this rulemaking more fully, the Bureau has performed the described analysis with respect to the impact on filers.

(c) The anti-fraud provisions of the Act require that certain representations be included in the contract in transactions which are not exempt under § 1010.5. Specifically, the Act requires that if a developer or agent represents that roads, sewers, water, gas or electric service or recreational amenities will be provided or completed by the developer, the contract must stipulate that the services or amenities will be provided or completed.

* * * * *

(e) A developer may present evidence, or otherwise discuss, in an informal hearing before the Office of Supervision Examinations, the Bureau's position on the jurisdiction or non-exempt status of a particular subdivision.

■ 4. Section 1010.5 is revised to read as follows:

§ 1010.5 Statutory exemptions.

A listing of the statutory exemptions is contained in 15 U.S.C. 1702. In accordance with 15 U.S.C. 1702(a)(2), if the sale involves a condominium or multi-unit construction, a presale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible if it is legally binding on the parties and is for a period not to exceed 180 days. However, the 180-day provision cannot extend the 2-year period for performance. The permissible 180 days is calculated from the date the first purchaser signs a sales contract in the project or, if a phased project, from the date the first purchaser signs the first sales contract in each phase.

■ 5. Section 1010.20 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1010.20 Requirements for registering a subdivision—Statement of Record—filing and form.

(a) *Filing.* (1) In order to register a subdivision and receive an effective date, the developer or owner of the subdivision must file a Statement of Record with the Director by either:

(i) U.S. Mail, to the following official address: Consumer Financial Protection Bureau, Interstate Land Sales Registration Program, 1700 G Street NW., Washington, DC 20552; or

(ii) Electronic means designated on the ILSA program page on the Bureau's Web site at *www.consumerfinance.gov/.*

(2) When the Statement of Record is filed, a fee in the amount set out in § 1010.35(b) must be paid in accordance with § 1010.35(a).

(b) *Form.* (1) The Statement of Record shall be in the format specified in § 1010.100 and shall be completed in accordance with the instructions in §§ 1010.102, 1010.105 through 1010.118, 1010.200, 1010.208 through 1010.216, and 1010.219. It shall be supported by the documents required by §§ 1010.208 through 1010.216 and 1010.219. It shall include any other information or documents which the Director may require as being necessary or appropriate for the protection of purchasers.

(2) The requirements relating to paper type, tabs, folding, and ordering for filings with the Bureau in § 1010.102(a), (g), and (h) do not apply if a Statement of Record is filed with the Bureau via electronic means designated on the Bureau's Web site pursuant to § 1010.20(a).

* * * * *

■ 6. Section 1010.21 is amended by revising paragraph (b)(1) to read as follows:

§ 1010.21 Effective dates.

* * * * *

(b) * * *

(1) A developer, or owner, may request that the effective date of its Statement of Record be suspended, provided there are no administrative proceedings pending against either of them at the time the request is submitted. The request must include any consolidations or amendments which have been made to the initial Statement of Record and may be submitted via the electronic means of submission described in § 1010.20(a). Forms for this purpose will be furnished by the Director upon request.

* * * * *

■ 7. Section 1010.23 is amended by revising paragraph (a) to read as follows:

§ 1010.23 Amendment—filing and form.

(a) *Filing.* If any change occurs in any representation of material fact required to be stated in an effective Statement of Record, an amendment shall be filed. The amendment shall be filed within 15 days of the date on which the developer knows, or should have known, that there has been a change in material fact. The amendment may be filed via the electronic means of submission described in § 1010.20(a).

* * * * *

■ 8. Section 1010.35 is amended by revising paragraph (a)(2) to read as follows:

§ 1010.35 Payment of fees.

(a) * * *

(2) Information regarding the current mailing address or electronic payment procedures is available from: Consumer Financial Protection Bureau, Interstate Land Sales Registration Program, 1700 G Street NW., Washington, DC 20552, or on the Bureau's Web site at *www.consumerfinance.gov.*

* * * * *

■ 9. Section 1010.102 is amended by revising paragraphs (a), (e), (h), and (m) to read as follows:

§ 1010.102 General instructions for completing the Statement of Record.

(a) *Paper and type.* The Statement of Record shall be on good quality, unglazed white or pastel paper. Letter size paper, approximately 8½ × 11 inches in size, will be used for the Property Report portion, and either letter size paper, approximately 8½ × 11 inches in size, or legal size paper, approximately 8½ × 14 inches in size, will be used for the Additional Information and Documentation portion. Side margins shall be no less than 1 inch and no greater than 1½ inches. Top and bottom margins shall be no less than 1 inch. In the preparation of the charts to be included in the Property Report, the developer may vary from the above margin requirements or print the charts lengthwise on the required size paper if such measures are necessary to make the charts readable. The Statement of Record shall be prepared in an easily readable, uniform font.

* * * * *

(e) *Headings, subheadings, captions, introductory paragraphs, warnings.* Property Report subject "headings" are those descriptive introductory words which appear immediately after section numbers 1010.106 through 1010.116 (*e.g.* § 1010.108 has "General Information" and § 1010.111 has "Utilities"). Each such heading shall be printed in the Property Report in underlined capital letters and centered at the top of a new page. Section numbers shall not be printed in the Property Report. Property Report subheadings are those descriptive introductory words which appear in italics in the regulations at the beginning of paragraphs designated by paragraph letters (a), (b), (c) etc. An example of a subheading is "water" found immediately after the paragraph letter (a) in § 1010.111. These subheadings will be printed in the Property Report only if they are relevant to the subject subdivision. If printed these subheadings shall be capitalized and shall begin at the left hand margin of the page. Property Report "captions" are those descriptive introductory words which appear in italics in the Regulations at the beginning of paragraphs designated by numbers (1), (2), (3), etc. An example of such captions is "Sales Contract and Delivery of Deed" found immediately after the paragraph number "(1)" in § 1010.109(b). These captions are to be printed in the Property Report only if they are applicable to the subject subdivision. If printed, these captions shall be centered on the page from the side margins, and shall have only the first letter of each word capitalized. Headings and subheadings will be used in the Property Report in accordance with the sample page appearing in section IX of the appendix to this part. Introductory paragraphs will follow headings if they are applicable and necessary for a readable entry into the subject matters, but note, the introductory paragraphs for "Title to the Property and Land Use" are to be used in every case as provided in § 1010.109(a)(1). Subheadings and captions which do not apply to the subdivision should be omitted from the Property Report portion and answered "not applicable" in the Additional Information and Documentation portion, unless specifically required to be included elsewhere in these instructions. Warnings shall be printed substantially as they appear in the instructions in §§ 1010.105 through 1010.118. They shall be printed in capital letters and may be enclosed in a box. The paragraphs in the Property Report portion need not be numbered. A sample page is set forth in section IX of the appendix to this part: Sample Page for Statement of Record.

* * * * *

(h) *Ordering.* The Statement of Record shall be filed with the Property Report portion on top, including any documents which may be required to be attached when delivered to the purchaser, followed by the Additional Information and Documentation portion.

* * * * *

(m) *Final version of Property Report.* On the date that a Statement of Record becomes effective, the Property Report portion shall become the Property Report for the subject subdivision. The version of the Property Report delivered to prospective lot purchasers shall be verbatim to that found effective by the Director and shall have no covers, pictures, emblems, logograms or identifying insignia other than as required by these regulations. It shall meet the same standards as to grade of paper, type size, margins, style and color of print as those set herein for the Statement of Record, except where required otherwise by these regulations. However, the date of typing or preparation of the pages and the ILSRP number shall not appear in the final version. If the final version of the Property Report is commercially printed, or photocopied by a process which results in a commercial printing quality, and is bound on the left side, both sides of the pages may be used for printed material. If it is typed or photocopied by a process which does not result in a clear and legible product on both sides of the page or is bound at the top, printing shall be done on only one side of the page. If a Statement of Record is filed with the Bureau via electronic means pursuant to § 1010.20(a), the version of the Property Report delivered to prospective lot purchasers shall meet the same standards that apply under these regulations to a Statement of Record not filed with the Bureau via electronic means. One copy of the final version of the Property Report, in the exact form in which it is delivered to prospective lot purchasers, shall be sent to ILSRP Office within 20 days of the date on which the Statement of Record, amendment, or consolidation is allowed to become effective by the Director. If a Property Report in a foreign language is used as required by § 1011.25(g), a copy of that Property Report together with a copy of the translated documents shall be furnished the Director within 20 days of the date on which the advertising is first used. A Property Report prepared pursuant to these regulations shall not be distributed to potential lot purchasers until after the Statement of Record of which it is a part or any amendment to that Statement of Record has been made effective by the Director.

■ 10. Section 1010.103 is amended by revising paragraph (a) to read as follows:

§ 1010.103 Developer obligated improvements.

(a) If the developer represents either orally or in writing that it will provide or complete roads or facilities for water, sewer, gas, electricity or recreational amenities, it must be contractually obligated to do so, and the obligation shall be clearly stated in the Property Report. While the developer may disclose relevant facts about completion, the obligation to complete cannot be conditioned, other than as permitted by 15 U.S.C. 1703(a)(2), and an estimated completion date (month and year) must be stated in the Property Report. However, a developer that has only tentative plans to complete may so state in the Property Report, provided that the statement clearly identifies conditions to which the completion of the facilities are subject and states that there are no guarantees the facilities will be completed.

* * * * *

■ 11. Section 1010.209 is amended by revising paragraph (f)(3)(iv) to read as follows:

§ 1010.209 Title and land use.

* * * * *

(f) * * *

(3) * * *

(iv) If it is represented that the developer will provide or complete roads or facilities for waters, sewer, gas, electric service or recreational amenities, the contract must contain a provision that the developer is obligated to provide or complete such roads, facilities and amenities.

* * * * *

■ 12. Section 1010.215 is amended by revising paragraph (a) to read as follows:

§ 1010.215 Subdivision characteristics and climate.

(a) Submit a copy of a current geological survey topographic map, or maps, of the largest scale available from the U.S. Geological Survey with an outline of the entire subdivision and the area included in this Statement of Record clearly indicated. Do not shade the areas on the maps which have been outlined.

* * * * *

■ 13. Section 1010.310 is amended by revising paragraph (b) to read as follows:

§ 1010.310 Annual report of activity.

* * * * *

(b) The report shall be submitted within 30 days of the annual anniversary of the effective date of the initial Statement of Record. The report may be submitted via the electronic means described in § 1010.20(a).

* * * * *

Subpart C—Certification of Substantially Equivalent State Law

■ 14. Section 1010.500 is amended by revising paragraph (a) to read as follows:

§ 1010.500 General.

(a) This subpart establishes procedures and criteria for certifying state land sale or lease disclosure programs and state land development standards programs. The purpose of State Certification is to lessen the administrative burden on the individual developer, arising where there are duplicative state and Federal registration and disclosure requirements, without affecting the level of protection given to the individual purchaser or lessee. If the Director determines that a state has adopted and is effectively administering a program that gives purchasers and lessees the same level of protection given to them by the Interstate Land Sales Registration Program, then the Director shall certify that state. Developers who accomplish an effective registration with a state in which the land is located after the Director has certified the state may satisfy the registration requirements of the Director by filing with the Director materials designated by agreement with certified states in lieu of the Federal Statement of Record and Property Report.

* * * * *

■ 15. Section 1010.503 is amended by revising paragraph (a) to read as follows:

§ 1010.503 Notice of certification.

(a) If the Director determines that a state qualifies for certification under this subpart, the Director shall so notify the state in writing. The state will be effectively certified under the section and as of the date specified in the notice.

* * * * *

■ 16. Section 1010.504 is amended by revising paragraphs (a) introductory text, (a)(1), and (c) to read as follows:

§ 1010.504 Cooperation among certified States and between certified States and the Director.

(a) By filing an Application for Certification of State Land Sales Program pursuant to this subpart, a state agrees that, if it is certified by the Director, it will:

(1) Accept for filing and allow to be distributed as the sole disclosure document, a disclosure document currently in effect in the situs certified State. Only those documents filed with the situs state after certification by the Director must automatically be accepted by other certified states;

* * * * *

(c) No state shall be prevented from establishing substantive or disclosure requirements which exceed the Federal standard provided that such requirements are not in conflict with the Act or these regulations. For example, a certified State may impose additional disclosure requirements on developers of land located within its borders but may not impose additional disclosure requirements on developers whose disclosure documents it is required to accept pursuant to paragraph (a)(1) of this section. However, a certified state may impose additional nondisclosure requirements on out of state developers even though the developer is registered in the certified State in which the land is located.

* * * * *

■ 17. Section 1010.505 is amended by revising the section heading to read as follows:

§ 1010.505 Withdrawal of State certification.

* * * * *

■ 18. Section 1010.506 is amended by revising paragraphs (a) and (f) to read as follows:

§ 1010.506 State/Federal filing requirements.

(a)(1) If the Director has certified a state under this subpart, the Director shall accept for filing disclosure materials or other acceptable documents which have been approved by the certified state within which the subdivision is located. Only those filings made by the developer with the state after the state was certified by the Director shall be automatically accepted by the Director.

(2) Retroactive application of the effectiveness of state's certification to a specified date may be granted on a state-by-state basis, where the Director determines that retroactive application will not result in automatic Federal registration of any state filing that has not met the requirements of the certified state laws.

* * * * *

(f) If a certified state suspends the registration of a particular subdivision for any reason, the subdivision's Federal registration with the Director shall be automatically suspended as a result of the state action. No action need be taken by the Director to effect the suspension.

* * * * *

■ 19. Section 1010.507 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1010.507 Effect of suspension or withdrawal of certification granted under 15 U.S.C. 1708(a)(1): Full disclosure requirement.

(a) If a state certified under 15 U.S.C. 1708(a)(1) suspends its own certification or has its certification withdrawn under § 1010.505, the Federal disclosure materials accepted and made effective by the Director, pursuant to § 1010.506, prior to the suspension or withdrawal shall remain in effect unless otherwise suspended by the Director.

* * * * *

■ 20. Section 1010.508 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1010.508 Effect of suspension of certification granted under 15 U.S.C. 1708(a)(2): Sufficient protection requirement.

(a) If a state certified under 15 U.S.C 1708(a)(2) suspends its own certification or has its certification withdrawn under § 1010.505, the effectiveness of the Federal disclosure materials accepted and made effective by the Director, pursuant to § 1010.506, prior to the suspension or withdrawal shall terminate ninety (90) days after the notice of withdrawal order is published in the **Federal Register** as provided in § 1010.505(c).

* * * * *

■ 21. Section 1010.552 is amended by revising paragraph (a) to read as follows:

§ 1010.552 Previously accepted State filings.

(a) Materials filed with a state and accepted by the HUD Secretary as a Statement of Record prior to January 1, 1981, pursuant to 24 CFR 1010.52 through 1010.59 (as published in the **Federal Register** on April 10, 1979) may continue in effect. However, developers must comply with the applicable amendments to the Federal act and the regulations thereunder. In particular, see §§ 1010.558 and 1010.559, which require that the Property Report and contracts or agreements contain notice of purchaser's revocation rights. In addition, see 15 U.S.C. 1703(a)(2)(D), which provides that it is unlawful to make any representations with regard to the developer's obligation to provide or complete roads, water, sewers, gas, electrical facilities or recreational amenities, unless the developer is obligated to do so in the contract.

* * * * *

■ 22. Appendix A is amended:

■ a. In section III, under the center heading "Suppliers and Utilities and Issuers of Permits" by revising the third paragraph; and

■ b. By revising section VIII.

The revisions read as follows:

Appendix A to Part 1010—Standard and Model Forms and Clauses

* * * * *

III. Sample Lot Information Statement and Sample Receipt—§ 1010.15(b)(11)

* * * * *

Suppliers of Utilities and Issuers or Permits

* * * * *

If misrepresentations are made in the sale of this lot to you, you may have rights under the Interstate Land Sales Full Disclosure Act. If you have evidence of any scheme, artifice or device used to defraud you, you may wish to contact: Consumer Financial Protection Bureau, Interstate Land Sales Registration

Program, 1700 G Street NW., Washington DC 20552.

* * * * *

VIII. Property Report for Statement of Record—§ 1010.100(b)

Property Report *Heading and Section Number*	
Cover Sheet	1010.105
Table of Contents	1010.106
Risks of Buying Land	1010.107
General Information	1010.108
Title and Land Use	1010.109
(a) General Instructions	
(b) Method of Sale	
(c) Encumbrances, Mortgages and Liens	
(d) Recording the Contract and Deed	
(e) Payments	
(f) Restrictions	
(g) Plats, Zoning, Surveying, Permits, Environment	
Roads	1010.110
Utilities	1010.111
(a) Water	
(b) Sewer	
(c) Electricity	
(d) Telephone	
(e) Fuel or other Energy Source	
Financial Information	1010.112
Local Services	1010.113
Recreational Facilities	1010.114
Subdivision Characteristics and Climate	1010.115
(a) General Topography	
(b) Water Coverage	
(c) Drainage and Fill	
(d) Flood Plain	
(e) Flooding and Soil Erosion	
(f) Nuisances	
(g) Hazards	
(h) Climate	
(i) Occupancy	
Additional Information	1010.116
(a) Property Owners' Association	
(b) Taxes	
(c) Violations and Litigation	
(d) Resale or Exchange Program	
(e) Unusual Situations	
1. Leases	
2. Foreign Subdivision	
3. Time Sharing	
4. Membership	
(f) Equal Opportunity in Lot Sales	
(g) Listing of lots	
Cost Sheet	1010.117
Receipt, Agent Certification and Cancellation Page	1010.118
ADDITIONAL INFORMATION AND DOCUMENTATION	
General Information	1010.208
Title and Land Use	1010.209
Roads	1010.210
Utilities	1010.211
Financial Information	1010.212
Recreational Facilities	1010.214
Subdivision Characteristics	1010.215
Additional Information	1010.216
Affirmation	1010.219

The Bureau's OMB control number for this information collection is: 3170–0012.

* * * * *

PART 1012—SPECIAL RULES OF PRACTICE (REGULATION L)

■ 24. The authority citation for part 1012 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1718.

■ 25. Section 1012.35 is revised to read as follows:

§ 1012.35 Prefiling assistance.

Persons intending to file with the Bureau of Consumer Financial Protection, Office of Supervision Examinations may receive advice of a general nature as to the preparation of the filing including information as to proper format to be used and the scope of the items to be included in the format. Inquiries and requests for informal discussions with staff members should be directed to the Consumer Financial Protection Bureau, Interstate Land Sales Registration Program, 1700 G Street NW., Washington, DC 20552.

■ 26. Section 1012.40 is amended by revising paragraph (a) introductory text to read as follows:

§ 1012.40 Processing of filings.

(a) Statements of Record and accompanying filing fees will be received on behalf of the Director by the Office of Supervision Examinations, for determination of whether the criteria set forth in paragraphs (a)(1) through (3) of this section have been satisfied. Where it appears that all three criteria are satisfied and it is otherwise practicable, acceleration of the effectiveness of the Statement of Record will normally be granted.

* * * * *

■ 27. Section 1012.236 is amended by revising paragraph (b) to read as follows:

§ 1012.236 Notice of proceedings to withdraw a State's certification.

* * * * *

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the basis for the Director's determination, pursuant to § 1010.505, that the State's laws, regulations and the administration thereof, taken as a whole, no longer meet the requirements of subpart C of part 1010.

* * * * *

Dated: May 1, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–10715 Filed 5–10–16; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0247; Directorate Identifier 2014–NM–178–AD; Amendment 39–18513; AD 2016–10–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Rolls-Royce Trent 800 series engines. This AD was prompted by reports of heat damage to the strut aft fairing heat shield primary seal, as well as heat and wear damage to the heat shield insulation blankets. This AD requires repetitive inspections for cracks and heat damage to the strut aft fairing lower spar web structure (a flammable fluid zone barrier), for wear to the heat shield primary seal, and, as applicable, for heat and wear damage to heat shield insulation blankets; and related investigative and corrective actions if necessary. This AD also provides optional terminating action for the repetitive inspections. We are issuing this AD to detect and correct cracks and heat damage to the strut aft fairing lower spar web structure (a flammable fluid zone barrier), wear to the heat shield primary seal, and heat and wear damage to heat shield insulation blankets, which could lead to through-cracks in the aft fairing lower web structure and heating of the aft fairing lower web structure, and consequent uncontrolled fire in the aft fairing, fuel tank ignition or possible departure of the engine.

DATES: This AD is effective June 15, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 15, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management,

P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *https://www.regulations.gov* by searching and locating Docket No. FAA–2015–0247.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0247; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Rolls-Royce Trent 800 series engines. The NPRM published in the **Federal Register** on March 12, 2015 (80 FR 12954) ("the NPRM"). The NPRM was prompted by reports of heat damage to the strut aft fairing heat shield primary seal, as well as heat and wear damage to the heat shield insulation blankets. The NPRM proposed to require repetitive inspections for cracks and heat damage to the strut aft fairing lower spar web structure (a flammable fluid zone barrier), for wear to the heat shield primary seal, and, as applicable, for heat and wear damage to heat shield insulation blankets; and related investigative and corrective actions if necessary. The NPRM also provided optional terminating action for the repetitive inspections. We are issuing this AD to detect and correct cracks and heat damage to the strut aft fairing lower spar web structure (a flammable fluid zone barrier), wear to the heat shield primary seal, and heat and wear damage to heat shield insulation blankets, which could lead to through-cracks in the aft fairing lower web structure and heating of the aft fairing lower web structure, and consequent uncontrolled fire in the aft fairing, fuel tank ignition or possible departure of the engine.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment. Marc Philippi stated that he supports the NPRM.

Request To Clarify Precipitating Event and Unsafe Condition

Boeing requested that we revise the **SUMMARY** and parts of the Discussion section of the NPRM to clarify that we received reports of heat damage to the strut aft fairing heat shield primary seal as well as heat and wear damage to the heat shield insulation blankets. Boeing also requested that we revise the **SUMMARY** of the NPRM and paragraph (e) of the proposed AD to clarify that the unsafe condition could lead to through-cracks in the aft fairing lower web structure and heating of the aft fairing lower web structure. Boeing further requested that we revise the Discussion section of the NPRM to indicate that the design of the strut aft fairing #1 heat shield (a titanium pan casting) and #1 heat shield insulation blanket allows hot turbulent gas from the exhaust nozzle to cause wear and degradation of the front face of the #1 insulation blanket, enter the heat shield cavity (the space or cavity between the heat shields and insulation blankets), and contact the strut aft fairing lower spar web structure. Boeing additionally pointed out that continuous exposure to hot turbulent gas further damages the primary seal and #1 insulation blanket, increasing the temperature in the heat shield cavity, and causes damage to the insulation blankets and lower web structure.

We agree that the requested changes provide clarity about the unsafe condition and consistency to the entire AD, and have revised the **SUMMARY** of this final rule and paragraph (e) of this AD accordingly. However, the requested revisions to the Discussion section of the NPRM are not included since certain paragraphs of the Discussion section of NPRMs are not restated in final rules.

Request To Remove References to the Lower Spar Web Structure as a Firewall

Boeing requested that we remove references to the strut aft fairing lower spar web structures as a firewall from the preamble of the NPRM and paragraph (e) of the proposed AD. Boeing indicated that the strut aft fairing lower spar web structure acts as a flammable fluid zone barrier, not a firewall. Boeing pointed out that a fire zone is defined as a region where flammable fluid and/or vapor leakage can occur where there is an ignition source present. Boeing also pointed out that a flammable fluid leakage zone is defined as an area in which flammable fluid and/or vapor leakage can occur, but where no ignition sources are present, and that since there are no ignition sources present in the strut aft fairing cavity, The Boeing Company 777 strut fire protection document defines the strut aft fairing cavity as a flammable fluid leakage zone.

We agree with the commenter, and have revised the preamble of this final rule and paragraph (e) of this AD accordingly.

Request To Include Information Notice in the Final Rule

Air New Zealand (ANZ) requested that we revise paragraph (h) of the proposed AD to include reference to Boeing Information Notice 777–54–0030 IN 01, dated April 7, 2015. ANZ pointed out that Boeing Information Notice 777–54–0030 IN 01, dated April 7, 2015, includes a statement to clarify part interchangeability and part intermixability. ANZ also pointed out that Boeing Service Bulletin 777–54–0030, dated May 27, 2014, does not include the statement to clarify part interchangeability and part intermixability and that the modification included in the optional terminating action could therefore potentially be removed by installing older design parts as specified in Boeing Service Bulletin 777–54A0031, Revision 1, dated May 9, 2014. ANZ noted that Boeing Information Notice 777–54–0030 IN 01, dated April 7, 2015, is not approved by the FAA or any other regulatory authority.

We acknowledge that Boeing Information Notice 777–54–0030 IN 01, dated April 7, 2015, contains the updated part interchangeability and part intermixability restriction statement for certain parts (such as insulation blankets). Boeing has issued Boeing Service Bulletin 777–54–0030, Revision

1, dated September 30, 2015, which contains the information specified in Boeing Information Notice 777–54–0030 IN 01, dated April 7, 2015. Once an airplane has been modified as specified in Boeing Service Bulletin 777–54–0030, dated May 27, 2014, or Boeing Service Bulletin 777–54–0030, Revision 1, dated September 30, 2015 (optional terminating action of installing redesigned or newer insulation blankets, and other associated parts), and the operator has shown compliance with paragraph (h)(1) of this AD, the modification cannot be removed without requesting approval of an Alternative Method of Compliance (AMOC). Any change to install the older design parts would invalidate the terminating action accomplished as specified in Boeing Service Bulletin 777–54–0030, dated May 27, 2014, or Boeing Service Bulletin 777–54–0030, Revision 1, dated September 30, 2015.

Therefore, we have revised paragraph (h)(1) of this AD to refer to Boeing Service Bulletin 777–54–0030, Revision 1, dated September 30, 2015, and provided credit for actions accomplished using Boeing Service Bulletin 777–54–0030, dated May 27, 2014, in paragraph (j)(2) of this AD.

ANZ stated that they believe the AMOC statement in the impending Airworthiness Notice should include Boeing Information Notice 777–54–0030 IN 01, dated April 7, 2015. We infer that ANZ is requesting an AMOC for that information notice.

We disagree with giving AMOC approval for Boeing Information Notice 777–54–0030 IN 01, dated April 7, 2015, because we are requiring Boeing Service Bulletin 777–54–0030, Revision 1, dated September 30, 2015, that already includes the information contained in Boeing Information Notice 777–54–0030 IN 01, dated April 7, 2015.

Request for Revised Service Information and Credit

ANZ requested that we revise paragraph (j) of the proposed AD to include credit for actions accomplished as specified in Boeing Service Bulletin 777–54–0030, dated May 27, 2014. ANZ pointed out that they have accomplished the actions required by paragraph (h)(1) of the proposed AD, on multiple 777–200 airplanes in their fleet, as specified in Boeing Service Bulletin 777–54–0030, dated May 27, 2014. ANZ also stated that they believe that credit for accomplishing the actions required by paragraph (h)(1) of the proposed AD, as specified in Boeing Service Bulletin 777–54–0030, dated May 27, 2014, should be added to paragraph (j) of the proposed AD.

We agree with the request to include actions accomplished as specified in Boeing Service Bulletin 777–54–0030, dated May 27, 2014, in paragraph (j) of this AD. Therefore, as stated previously, we have revised this final rule to provide credit for actions accomplished using Boeing Service Bulletin 777–54–0030, dated May 27, 2014, in paragraph (j)(2) of this AD.

Request To Correct a Typographical Error

Boeing requested that we correct a typographical error by inserting missing dollar signs in the Cost of Compliance column of the On-Condition Costs table.

We agree and have revised this final rule to include the missing information.

Clarification of Actions

Boeing issued Information Notice 777–54A0031 IN 01, dated September 24, 2015, to clarify access information when removing and installing pan casting number 6. Information Notice 777–54A0031 IN 01, dated September 24, 2015, specifies that when removing pan casting number 6 in FIGURE 9 and FIGURE 10 of Boeing Service Bulletin 777–54A0031, Revision 1, dated May 9, 2014, it is acceptable to remove and keep the bracket attached to the drain lines or remove the P-clamps for access. We refer to Boeing Service Bulletin 777–54A0031, Revision 1, dated May 9, 2014, as the appropriate source of service information for accomplishing the actions required by paragraph (g) of this AD. Note 12 in Paragraph 3.A., "General Information," of Boeing Alert Service Bulletin 777–54A0031, dated June 7, 2013; and Revision 1, dated May 9, 2014; contains statements informing and permitting removal of more parts for access when necessary. Also, operators may have been performing these same or similar access steps when removing pan casting number 6. Thus, the clarification in the information notice is neither new nor additional work. Further, this clarification of access information is already included in Boeing Service Bulletin 777–54–0030, Revision 1, dated September 30, 2015, which is the appropriate source of service information for accomplishing the actions required by paragraph (h)(1) of this AD. Therefore, we have determined it is not necessary to include reference to Information Notice 777–54A0031 IN 01, dated September 24, 2015, in the regulatory text of this AD.

Clarification of Credit

Although the Accomplishment Instructions of Boeing Alert Service Bulletin 777–54A0031, dated June 7, 2013, correctly show all nine insulation blankets for doing the actions, paragraph 2., "Material Information" only lists eight insulation blankets and is missing part number 313W5421–29. Therefore, we have clarified paragraph (j)(1) of this AD to specify that credit for previous actions are acceptable, provided that insulation blanket part number 313W5421–29 is inspected and reinstalled, or replaced with a new insulation blanket; as applicable, as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 777–54A0031, dated June 7, 2013.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed the following service information:

- Boeing Service Bulletin 777–54A0031, Revision 1, dated May 9, 2014.
- Boeing Service Bulletin 777–54–0030, Revision 1, dated September 30, 2015.

The service information describes procedures for repetitive inspections for heat damage to the strut aft fairing lower spar web structure (a flammable fluid zone barrier) and heat shield primary seal, and heat and wear damage to heat shield insulation blankets; and related investigative and corrective actions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 57 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections ..	40 work-hours × $85 per hour = $3,400 per inspection cycle.	$0	$3,400 per inspection cycle.	$193,800 per inspection cycle

We estimate the following costs to do any necessary replacements that would be required based on the results of the required inspection. We have no way of determining the number of airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Heat shield primary seal replacement	10 work-hours × $85 per hour = $850	$1,940	$2,790
Cracked or damaged parts replacement ..	110 work-hours × $85 per hour = $9,350	$52,992	$62,342

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–10–02 The Boeing Company: Amendment 39–18513; Docket No. FAA–2015–0247; Directorate Identifier 2014–NM–178–AD.

(a) Effective Date

This AD is effective June 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes equipped with Rolls-Royce Trent 800 series engines, certificated in any category, as identified in Boeing Service Bulletin 777–54A0031, Revision 1, dated May 9, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

(e) Unsafe Condition

This AD was prompted by reports of heat damage to the strut aft fairing heat shield primary seal, as well as heat and wear damage to the heat shield insulation blankets. We are issuing this AD to detect and correct cracks and heat damage to the strut aft fairing lower spar web structure (a flammable fluid zone barrier), wear to the heat shield primary seal, and heat and wear damage to heat shield insulation blankets, which could lead to through-cracks in the aft fairing lower web structure and heating of the aft fairing lower web structure, and consequent uncontrolled fire in the aft fairing, fuel tank ignition or possible departure of the engine.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections

At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Service Bulletin 777–54A0031, Revision 1, dated May 9, 2014, except as required by paragraph (i) of this AD: Do the inspections specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–54A0031, Revision 1, dated May 9, 2014. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Service Bulletin 777–54A0031, Revision 1, dated May 9, 2014.

(1) Do a detailed inspection for cracks and heat damage of the aft fairing lower spar upper surface.

(2) Do a conductivity inspection for heat damage of the aft fairing lower spar upper surface.

(3) Do a detailed inspection for wear of the heat shield primary seal.

(h) Optional Terminating Action

The concurrent accomplishment of the actions specified in paragraphs (h)(1) and (h)(2) of this AD terminates the requirements of paragraph (g) of this AD.

(1) Replacement of all heat shield insulation blankets (rub strips, heat shield pan casting, Velcro strips, aft fairing web drain sump, drain screen, and drain tubes, as applicable) in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–54–0030, Revision 1, dated September 30, 2015.

(2) A one-time detailed inspection for cracks and heat damage of the aft fairing lower spar upper surface, conductivity inspection for heat damage of the aft fairing lower spar upper surface, and detailed inspection for wear of heat shield primary seal, and all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–54A0031, Revision 1, dated May 9, 2014, provided all applicable related investigative and corrective actions are done before further flight.

(i) Exception to Service Information Specifications

Where Boeing Service Bulletin 777–54A0031, Revision 1, dated May 9, 2014, specifies a compliance time "After the Original Issue Date of this Service Bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (h)(2) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 777–54A0031, dated June 7, 2013, provided that insulation blanket part number 313W5421–29 is inspected and reinstalled, or replaced with a new insulation blanket, as applicable, as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 777–54A0031, dated June 7, 2013. This service information is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions specified in paragraph (h)(1) of this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 777–54–0030, dated May 27, 2014. This service information is not incorporated by reference in this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Service Bulletin 777–54A0031, Revision 1, dated May 9, 2014.

(ii) Boeing Service Bulletin 777–54–0030, Revision 1, dated September 30, 2015.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.*

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on April 28, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–10931 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4256; Directorate Identifier 2016–CE–002–AD; Amendment 39–18512; AD 2016–10–01]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all M7 Aerospace LLC Models SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes. We received reports of failed elevator control rod ends due to corrosion and lack of lubrication. This AD requires initial and repetitive inspections and lubrication of the elevator control rod ends and bearings with replacement as necessary. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective June 15, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 15, 2016.

ADDRESSES: For service information identified in this final rule, contact M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: *MetroTech@M7Aerospace.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4256.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4256; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all M7 Aerospace LLC Models SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes. The NPRM published in the **Federal Register** on March 4, 2016 (81 FR 11469). The NPRM was prompted by reports of broken elevator control rod link assemblies between the elevator torque tube and the elevator quadrant due to corrosion and lack of lubrication on M7 Aerospace SA26, SA226, and SA227 airplanes. The NPRM proposed to require initial and repetitive inspections of the elevator control rod ends and bearings with replacement as necessary. We are issuing this AD to correct the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 11469, March 4, 2016) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 11469, March 4, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 11469, March 4, 2016).

Related Service Information Under 1 CFR Part 51

We reviewed M7 Aerospace Service Bulletin (SB) 226–27–080 R1, M7 Aerospace LLC SB 227–27–060 R1, and M7 Aerospace LLC SB CC7–27–032 R1, all Issued: November 5, 2015, and Revised: February 23, 2016. The service information describes procedures for inspection of the elevator control link assemblies between the elevator torque tubes and the elevator quadrant for frozen (stiff, hard to move) bearings or broken/cracked links (rod ends) with instructions for lubrication and replacement if necessary. All of the related service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

We estimate that this AD affects 350 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and lubrication	2 work-hours × $85 per hour = $170.	Not applicable	$170	$59,500

We estimate the following costs to do any necessary repairs/replacements that would be required based on the results of the inspection. We have no way of determining the number of airplanes that might need these repairs/replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace Rod End	4 work-hours × $85 per hour = $340	$30	$370

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–10–01 M7 Aerospace LLC: Amendment 39–18512; Docket No. FAA–2016–4256; Directorate Identifier 2016–CE–002–AD.

(a) Effective Date

This AD is effective June 15, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to M7 Aerospace LLC Models SA226–AT, SA226–T, SA226–T (B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2730, Elevator Control System.

(e) Unsafe Condition

This AD was prompted by reports of failed elevator control rod ends due to corrosion and lack of lubrication. We are issuing this AD to require initial and repetitive inspections and lubrication of the elevator control rod ends and bearings with replacement as necessary. We are proposing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with paragraphs (g)(1) through (g)(5) of this AD using the following service bulletins within the compliance times specified, unless already done:

(1) *For Models SA226–AT, SA226–T, SA226–T(B), and SA226–TC:* M7 Aerospace LLC Service Bulletin (SB) 226–27–080 R1, Issued: November 5, 2015, and Revised: February 23, 2016;

(2) *For Models SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), and SA227–TT:* M7 Aerospace LLC SB 227–27–060 R1, Issued: November 5, 2015, and Revised: February 23, 2016; or

(3) *For Models SA227–CC and SA227–DC (C–26B):* M7 Aerospace LLC SB CC7–27–032 R1, Issued: November 5, 2015, and Revised: February 23, 2016.

(g) Actions

(1) If abnormally high resistance is reported when operating the elevators, before further flight after June 15, 2016 (the effective date of this AD), inspect and lubricate installed elevator control links following paragraph 2.A. of the Accomplishment Instructions of the service bulletins identified in paragraphs (f)(1), (f)(2), or (f)(3) of this AD, as applicable.

(2) Remove the elevator control links and inspect following paragraph 2.B. (and 2.C. when applicable) and lubricate the bearings following paragraph 2.E. of the Accomplishment Instructions of the service bulletins identified in paragraphs (f)(1), (f)(2), or (f)(3) of this AD, as applicable, at whichever of the following occurs first:

(i) At the next Zone related Phase or Letter Check inspection after June 15, 2016 (the effective date of this AD) or within the next 600 hours time-in-service after June 15, 2016 (the effective date of this AD), whichever occurs later; or

(ii) Within the next 6 months after June 15, 2016 (the effective date of this AD).

(3) Repetitively remove and inspect the elevator control links not to exceed every 12 months following any inspection required in paragraph (g)(1) or (g)(2) of this AD following paragraph 2.B. (and 2.C. when applicable) and lubricate the bearings following paragraph 2.E. of the Accomplishment Instructions of the service bulletins identified in paragraphs (f)(1), (f)(2), or (f)(3) of this AD, as applicable.

(4) If during any inspection required in paragraphs (g)(1), (g)(2) or (g)(3) of this AD, any link assemblies between the elevator torque tubes and the elevator quadrant are found to have frozen (stiff, hard to move) bearings or broken/cracked links (rod ends), before further flight, replace the rod ends following paragraph 2.D. and lubricate the bearings following with paragraph 2.E. of the Accomplishment Instructions of the service bulletins identified in paragraphs (f)(1), (f)(2), or (f)(3) of this AD, as applicable.

(5) Repetitively lubricate the rod end bearings (male and female) on both elevator control link assemblies following the time limits in paragraph 1.D.4) of the applicable SB, but not to exceed every 6 months, and following the procedures in paragraph 2.E. of the Accomplishment Instructions of the service bulletins identified in paragraphs (f)(1), (f)(2), or (f)(3) of this AD, as applicable.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Related Information

For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) M7 Aerospace Service Bulletin (SB) 226–27–080 R1, dated February 23, 2016;

(ii) M7 Aerospace LLC SB 227–27–060 R1, dated February 23, 2016; and

(iii) M7 Aerospace LLC SB CC7–27–032 R1, dated February 23, 2016.

(3) For M7 Aerospace LLC service information identified in this AD, contact M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: *MetroTech@M7Aerospace.com.*

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on May 3, 2016.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–10872 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6628; Directorate Identifier 2016–CE–013–AD; Amendment 39–18514; AD 2016–10–03]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Viking Air Limited Model DHC–3 airplanes that are modified with the Baron Short Take Off and Landing (STOL) kit (Supplemental Type Certificate SA94–114 or SA 00287NY). This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a center of gravity that is too far aft contributing to a stall during takeoff and loss of control during other phases of flight. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective May 31, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 31, 2016.

We must receive comments on this AD by June 27, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Stolairus Aviation Inc., (formerly known as AOG Air Support, Inc.), 6095 Airport Way, Kelowna, British Columbia V1V 1S1; phone: (250) 491–7511; fax: (25) 491–7522; Internet: *http://www.stolairus.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6628.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6628; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 287–7329; fax: (516) 794–5531; email: *aziz.ahmed@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada, which is the aviation authority for Canada, has issued AD No. CF–2016–05, dated January 25, 2016 (referred to after this as "the MCAI"), to correct an unsafe condition for Viking Air Limited Model DHC–3 airplanes that are modified with the Baron Short Take Off and Landing (STOL) kit (Supplemental Type Certificate SA94–114 or SA 00287NY). The MCAI states (paraphrased):

> The investigation of a fatal crash of a turbo-propeller powered DHC–3 airplane modified with a Baron STOL kit determined that the probable cause was a rearward shift in the center of gravity, which resulted in a stall during takeoff. A center of gravity that is too far aft can contribute to a stall during takeoff and may result in loss of control during other phases of flight.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6628.

Related Service Information Under 1 CFR Part 51

Stolarious Aviation Inc. has issued Flight Manual Supplement #4, de Havilland DHC–3 Otter, Baron STOL Kit Installation, DOT STC # SA 94–114/ FAA STC # SA 00287NY, Revision 3, dated May 22, 2015. The service information consists of a revision to the Baron STOL kit installation flight manual supplement (FMS). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a center of gravity that is too far aft could lead to a stall during takeoff and loss of control during other phases of flight. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6628; Directorate Identifier 2016–CE–013–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD will affect 36 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $3,060, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2016–10–03 Viking Air Limited: Amendment 39–18514 Docket No. FAA–2016–6628; Directorate Identifier 2016–CE–013–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 31, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited Model DHC–3 airplanes, all serial numbers, that are:

(1) Modified with the Baron Short Take Off and Landing (STOL) kit (Supplemental Type Certificate SA94–114 or SA 00287NY); and

(2) certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 8: Leveling and Weighing.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an accident report that indicated that the center of gravity was too far aft and contributed to a stall during takeoff. We are issuing this AD to correct the center of gravity and prevent such a stall during takeoff and loss of control during other phases of flight.

(f) Actions and Compliance

Unless already done, within 30 days after May 31, 2016 (the effective date of this AD), remove whichever previous revision of the Otter Baron short take-off and landing (STOL) kit installation flight manual supplement (FMS) that is currently being used and incorporate Stolairus Aviation Inc. Flight Manual Supplement #4 for de Havilland DHC–3 Otter with the Baron STOL Kit Installation, Revision 3, dated May 22, 2015. This action may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9 (a)(1)(4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.173 or 135.439.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Aziz Ahmed, Aerospace Engineer, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 287–7329; fax: (516) 794–5531; email: *aziz.ahmed@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI Transport Canada AD CF–2016–05, dated January 25, 2016, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6628.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Stolairus Aviation Inc., Flight Manual Supplement #4, de Havilland DHC–3 Otter, Baron STOL Kit Installation, DOT STC # SA 94–114/FAA STC # SA 00287 NY, Revision 3, dated May 22, 2015.

(ii) Reserved.

(3) For Stolairus Aviation Inc. service information identified in this AD, contact Stolairus Aviation Inc. (formerly known as AOG Air Support, Inc.), 6095 Airport Way, Kelowna, British Columbia V1V 1S1; phone: (250) 491–7511; fax: (25) 491–7522; internet: *http://www.stolairus.com.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2016–6628.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri on May 4, 2016.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–10928 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–5801; Airspace Docket No. 15–AGL–18]

Establishment of Class E Airspace; Beach, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Beach Airport, Beach, ND, to accommodate new Standard Instrument Approach Procedures for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, July 21, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone: 817–222–5857.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Beach Airport, Beach ND.

History

On February 4, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Beach Airport, Beach, ND. (81 FR 5948). Docket No. FAA–2015–5801. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within an 9-mile radius of Beach Airport, Beach, ND, to accommodate new Standard Instrument Approach Procedures for IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exists that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AGL ND E5 Beach, ND [New]

Beach Airport, ND
(Lat. 46°55′31″ N., long. 103°58′55″ W.)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Beach Airport.

Issued in Fort Worth, TX, on April 27, 2016.

Vonnie Royal,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–10736 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 514

[Docket No. FDA–2012–N–0447]

RIN 0910–AG45

Antimicrobial Animal Drug Sales and Distribution Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is issuing a final rule to require that the sponsor of each approved or conditionally approved new animal drug product that contains an antimicrobial active ingredient submit an annual report to us on the amount of each such ingredient in the drug product that is sold or distributed for use in food-producing animals, including information on any distributor-labeled product. This final rule codifies the reporting requirements established in section 105 of the Animal Drug User Fee Amendments of 2008 (ADUFA). The final rule also includes an additional reporting provision intended to enhance our understanding of antimicrobial new animal drug sales intended for use in specific food-producing animal species and the relationship between such sales and antimicrobial resistance.

DATES: This rule is effective July 11, 2016. For the applicable compliance dates, please see section V, "Effective and Compliance Dates" in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the "Search" box and follow the prompts, and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *With regard to the final rule:* Neal Bataller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5745, *Neal.Bataller@fda.hhs.gov.*

With regard to the information collection: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

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I. Executive Summary

A. Purpose of the Final Rule

The purpose of this rulemaking is to change the way we collect and report information related to the distribution and sale of approved or conditionally approved antimicrobial new animal drug products for use in food-producing animals.

Sponsors of approved or conditionally approved applications for new animal drugs containing an antimicrobial active ingredient are required by section 512 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b), as amended by section 105 of ADUFA (ADUFA 105) (Title I of Pub. L. 110–316), to submit to us an annual report on the amount of each such ingredient in the drug that is sold or distributed for use in food-producing animals. We are also required by ADUFA 105 to publish annual summary reports of the data we receive from animal drug sponsors. In accordance with the law, sponsors of the affected antimicrobial new animal drug products began submitting their sales and distribution data to us on an annual basis, and we have published summaries of such data for each calendar year beginning with 2009. Since that time, we have published two documents inviting public input on potential changes to our regulations relating to records and reports for approved new animal drugs, including an advance notice of proposed rulemaking (77 FR 44177, July 27, 2012) and a proposed rule (80 FR 28863, May 20, 2015). This final rule amends our existing records and reports regulation in part 514 (21 CFR part 514) to incorporate the sales and distribution data reporting requirements specific to antimicrobial new animal drugs that were added to the FD&C Act by ADUFA 105. ADUFA 105 was enacted to assist us in our continuing analysis of the interactions (including drug resistance), efficacy, and safety of antimicrobials approved for use in both humans and food-producing animals for the purpose of mitigating the public health risk associated with antimicrobial resistance. This rule includes an additional reporting provision intended to improve our understanding of antimicrobial animal drug sales intended for use in specific food-producing animal species. This additional provision assists us in assessing antimicrobial sales trends in the major food-producing animal species and examining how such trends may relate to antimicrobial resistance.

Finalizing this rule will assist us in assessing the rate at which sponsors are voluntarily revising their FDA-approved labeled use conditions to promote the judicious use of medically important antimicrobial drugs in food-producing animals. In December 2013, we published guidance for industry (GFI) #213 (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM299624.pdf*), a guidance that calls on sponsors of approved medically important antimicrobial new animal drugs administered through medicated feed or water to voluntarily make changes to remove production uses (growth promotion and feed efficiency) from their product labels and bring the remaining therapeutic uses of these products (to treat, control, or prevent disease) under the oversight of a veterinarian by the end of December 2016. All affected drug sponsors committed to implementing the changes described in guidance for industry (GFI) #213 by the December 2016 target date. Once the changes are fully implemented, it will be illegal to use these medically important antibiotics for production purposes, and animal producers will first need to obtain authorization from a licensed veterinarian to use them for therapeutic purposes (*i.e.,* prevention, control, or treatment of a specifically identified disease).

Finalizing this rule also implements Sub-Objective 2.4.2 ("Enhance collection and reporting of data regarding antibiotic drugs sold and distributed for use in food-producing animals") of the "National Action Plan for Combating Antibiotic-Resistant Bacteria" (National Action Plan) (*https://www.whitehouse.gov/sites/default/files/docs/national_action_plan_for_combating_antibotic-resistant_bacteria.pdf*). The National Action Plan, released by the White House on March 27, 2015, was developed in response to Executive Order 13676: Combating Antibiotic-Resistant Bacteria, which was issued by President Barack Obama on September 18, 2014, in conjunction with the National Strategy for Combating Antibiotic-Resistant Bacteria. The National Action Plan is intended to guide the activities of the U.S. Government as well as the actions of public health, health care, and veterinary partners in a common effort to address the urgent and serious public health threat of drug-resistant bacterial infections. Objective 2.4 of the National Action Plan is to "enhance monitoring of antibiotic-resistance patterns, as well as antibiotic sales, usage, and management practices, at multiple points in the production chain from food-animals on-farm, through processing, and retail meat."

The provisions included in this final rule take into account stakeholder input received in response to multiple opportunities for public comment, including the advance notice of proposed rulemaking and the proposed rule.

B. Summary of the Major Provisions of the Final Rule

The rule amends the records and reports regulation in part 514 to include the following:

- Procedures relating to the submission to us of annual sales and distribution data reports by sponsors of approved or conditionally approved antimicrobial new animal drug products sold or distributed for use in food-producing animals. Sponsors are already submitting such reports as required by ADUFA 105.
- Procedures relating to the requirement for sponsors of approved or conditionally approved antimicrobial new animal drugs to begin submitting species-specific estimates of product sales as a percentage of their total sales. This new reporting requirement was included based on our authority under section 512(*l*)(1) of the FD&C Act.
- Procedures applicable to our preparation and publication of summary reports on an annual basis based on the sales and distribution data we receive from sponsors of approved or conditionally approved antimicrobial new animal drug products. The final rule includes specific parameters for the content of the annual summary reports as well as provisions intended to protect confidential business information and national security, consistent with ADUFA 105 and this Agency's regulations at § 20.61 (21 CFR 20.61).
- Provisions that will give sponsors of approved or conditionally approved antimicrobial new animal drug products that are sold or distributed for use in food-producing animals the opportunity to avoid duplicative reporting of product sales and distribution data to us under part 514.

C. Legal Authority

Our legal authority for issuing this final rule is provided by section 512(*l*) of the FD&C Act relating to records and reports concerning approved and conditionally approved new animal drugs. In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) gives us general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act.

D. Costs and Benefits

We estimate one-time costs to industry from this final rule at about $134,600. We estimate annual costs at about $57,300. These costs equate to an estimated total annualized cost of about $76,500 at a 7 percent discount rate over 10 years and about $73,100 at a 3 percent discount rate over 10 years. The total annualized costs include the administrative cost to review the rule ($8,800), plus the cost to those sponsors who wish to avoid duplicative reporting requirements under part 514 ($4,900), plus the cost of providing the species-specific estimates of the percent of the drug product distributed domestically ($62,700).

The final rule provides some flexibility in terms of the manner in which new animal drug sponsors report sales and distribution data under both § 514.80(b)(4) and § 514.87, by allowing the sponsor the option to satisfy its obligations under both provisions by making only one set of report submissions under certain circumstances. We estimate this will reduce labor costs for new animal drug sponsors by $103,200 annually.

Another benefit of the final rule is the cost savings associated with sponsors reporting their monthly sales and distribution data to us in terms of product units rather than calculating the amount of antimicrobial active ingredients associated with these monthly product sales and distribution data, as is currently the case. We estimate the calculation reductions will amount to an annual benefit to animal drug sponsors of about $19,100. We estimate total annual benefits to industry at about $122,300.

II. Background

A. Need for the Regulation/History of the Rulemaking

Section 512(*l*)(1) of the FD&C Act, which was added by the Animal Drug Amendments of 1968 (Pub. L. 90–399), requires sponsors of approved or conditionally approved new animal drugs to establish and maintain records and make such reports of data relating to experience and other data or information received or obtained by the sponsor with respect to such drug as required by regulation or order. Part 514 of FDA's regulations implements section 512(*l*) of the FD&C Act and requires new animal drug sponsors to report various types of information to FDA relating to their approved drug products, including periodic drug experience reports under § 514.80(b)(4). Such reports must contain detailed information as specified in the regulations, including information concerning the quantities of the animal drug product distributed under the sponsor's approved application. The requirement for periodic reports under § 514.80(b)(4) applies to all sponsors of approved new animal drug products and is separate from the reporting requirements subsequently established under ADUFA 105 relating to antimicrobial new animal drugs.

This continuous monitoring of approved new animal drug applications (NADAs) by collecting post-approval information from sponsors is important because data previously submitted to FDA as part of the approval process may no longer be adequate, as animal drug effects can change over time and less apparent effects including, for example, on antimicrobial resistance, can sometimes take years to become evident. For this reason, post-approval reports are one of the primary means by which FDA can obtain information regarding safety or effectiveness problems with marketed new animal drugs.

In an effort to address mounting public health concerns about antimicrobial drug resistance, Congress, in 2008, enacted ADUFA 105 to enhance the reports collected by FDA concerning marketed new animal drug products that contain an antimicrobial active ingredient. ADUFA 105 amended section 512(*l*) of the FD&C Act by adding section 512(*l*)(3). Under new section 512(*l*)(3) of the FD&C Act, sponsors of antimicrobial new animal drugs approved or conditionally approved for use in food-producing animals must submit to us on an annual basis a report specifying the amount of each antimicrobial active ingredient in the drug that is sold or distributed for use in food-producing animals. Specifically, sponsors are required to report the amount of each antimicrobial active ingredient as follows: (1) By container size, strength, and dosage form; (2) by quantities distributed domestically and quantities exported; and (3) for each dosage form, a listing of the target animals, indications, and production classes that are specified on the approved label of the product. The information must be reported for the preceding calendar year, include separate information for each month of the calendar year, and be submitted to us each year no later than March 31. The statute also requires FDA to publish summary reports of the antimicrobial drug sales and distribution data collected from the drug sponsors on an annual basis, and further requires that such data be reported by antimicrobial class (section 512(*l*)(3) of the FD&C Act). In accordance with the law, sponsors of the affected antimicrobial new animal drug products began submitting their sales and distribution data to us on an annual basis, and we have published summaries of such data for each calendar year beginning with 2009.

In the **Federal Register** of May 20, 2015 (80 FR 28863), we proposed to amend our existing animal drug records and reports regulation in part 514 to incorporate the antimicrobial drug sales and distribution data reporting requirements established by ADUFA 105. We proposed (80 FR 28863 at 28864) to amend part 514 to include administrative practices and procedures for sponsors of antimicrobial new animal drugs sold or distributed for use in food-producing animals who must report annually under section 512(*l*)(3) of the FD&C Act. We also proposed (80 FR 28863 at 28864) to collect species-specific data to assist us in assessing antimicrobial sales trends in the major food-producing animal species and examining how such trends may relate to antimicrobial resistance. We set forth the rationale that having the improved data would support our ongoing efforts to encourage the judicious use of antimicrobials in food-producing animals to help ensure the continued availability of safe and effective antimicrobials for animals and humans (80 FR 28863 at 28864).

We believe that on-farm use data also are needed to obtain additional information necessary to help gauge the success of antibiotic stewardship efforts and guide their continued evolution and optimization, and assess associations between antibiotic use practices and resistance. Shortly after we issued the proposed rule, in the **Federal Register** of August 20, 2015 (80 FR 50638), we published a notice announcing plans to hold a public meeting on September 30, 2015, which we jointly sponsored with the U.S. Department of Agriculture (USDA) and the Centers for Disease Control and Prevention (CDC) to obtain public input on possible approaches for collecting additional on-farm antimicrobial drug use and resistance data. Such additional data are intended to supplement existing information, including data on the quantity of antimicrobials sold or distributed for use in food-producing animals and data on antimicrobial use and resistance, for example, data collected under the National Animal Health Monitoring System (NAHMS) and the National Antimicrobial Resistance Monitoring System (NARMS). In the notice of public meeting, we explained that data from multiple sources are needed to provide a comprehensive and science-based picture of antimicrobial drug use and resistance in animal agriculture (80 FR 50638 at 50639). Taking into account the comments received from this public meeting, we are continuing to work with the USDA and the CDC in developing this plan to help ensure the continued availability of safe and effective antimicrobials for use in humans and animals. The information that we will receive under this final rule is part of this coordinated, interagency effort to assess and minimize antimicrobial resistance to help ensure the continued availability of safe and effective antimicrobial drugs for use in treating infectious disease in animals and humans.

B. Summary of Comments to the Proposed Rule

We received approximately 440 individual comments on the proposed rule from veterinary, feed manufacturing, and livestock production associations, as well as consumer advocacy groups and individuals, and a member of Congress. Some comments support our rulemaking and our ongoing efforts to address the problem of antimicrobial resistance, while others express concern about the manner in which data are going to be collected, interpreted, and used. Some comments offer suggestions for specific changes for us to consider making to the subject regulations.

C. General Overview of the Final Rule

This final rule amends our animal drug records and reports regulation at part 514 to include administrative practices and procedures for sponsors of antimicrobial new animal drugs sold or distributed for use in food-producing animals who must report annually under section 512(*l*)(3) of the FD&C Act. In addition, the rule includes a provision based on our broader authority under section 512(*l*)(1) that requires sponsors to report antimicrobial new animal drug sales intended for use in specific food-producing animal species. In this rulemaking, we finalize the provisions in the proposed rule.

III. Legal Authority

Our legal authority for issuing this final rule is provided by section 512(*l*) of the FD&C Act relating to records and reports concerning approved new animal drugs and section 701(a) of the FD&C Act. Section 512(*l*) gives FDA broad authority to collect information from sponsors concerning their approved or conditionally approved new animal drug products. Specifically, under section 512(*l*)(1) of the FD&C Act, animal drug sponsors with approved or conditionally approved NADAs must "make such reports to the Secretary, of data relating to experience, including experience with uses authorized under subsection (a)(4)(A) [relating to extralabel use], and other data or information, received or otherwise obtained by such applicant with respect to such drug, or with respect to animal feeds bearing or containing such drug, as the Secretary may by general regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination, whether there is or may be ground for invoking subsection (e) or subsection (m)(4) of this section [authorizing FDA to withdraw approval of a new animal drug or revoke a license to manufacture medicated feed]." The statute provides for withdrawal of approval if FDA finds that new information shows that the drug is no longer shown to be safe for use under the approved conditions of use or the drug is ineffective for uses prescribed or recommended in the drug's labeling (21 U.S.C. 360b(e)(1)).

Pursuant to its authority under section 512(*l*)(1) of the FD&C Act, FDA issued recordkeeping and reporting regulations relating to experience with approved new animal drugs. These regulations, which are found at part 514, include the requirement at § 514.80(b)(4) for animal drug sponsors to submit periodic drug experience reports to FDA every 6 months for the first 2 years following approval of their application and subsequently on an annual basis. The periodic reports that sponsors are required to submit under § 514.80(b)(4) must include detailed information as specified in the regulations, including information concerning the quantities of the animal drug product distributed under the sponsor's approved application. The requirement for sponsors to submit distribution data to us under § 514.80(b)(4) predates the enactment of ADUFA 105.

In addition to the broad authority already granted to FDA under section 512(*l*)(1) of the FD&C Act, in 2008, Congress established additional reporting requirements under ADUFA 105 for sponsors of antimicrobial new animal drug products. These new reporting requirements, which are set out in section 512(*l*)(3) of the FD&C Act, did not require the Agency to issue implementing regulations first in order for them to take effect. With respect to approved or conditionally approved new animal drugs containing an antimicrobial active ingredient, section 512(*l*)(3)(A) through (C) of the FD&C Act requires sponsors of such products to submit an annual report to FDA on the "amount of each antimicrobial active ingredient in the drug that is sold or distributed for use in food-producing animals, including information on any distributor labeled product" by March 31 of each year with separate data included for each month of the preceding calendar year. In addition, section 512(*l*)(3)(E) of the FD&C Act requires FDA to prepare summaries of the information reported by drug sponsors concerning their antimicrobial new animal drugs and to make those summaries available to the public. In accordance with ADUFA 105, sponsors of the affected antimicrobial new animal drug products have submitted their sales and distribution data to us, and we have published summaries of such data, for each calendar year since 2009.

In enacting ADUFA 105, Congress clarified that "[t]he reports required [to be submitted by animal drug sponsors] under section 512(*l*)(3) of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a) [of ADUFA 105], shall be separate from periodic drug experience reports that are required under section 514.80(b)(4) of title 21, Code of Federal Regulations." (see subsection (c) of ADUFA 105).

Section 701(a) of the FD&C Act gives us general rulemaking authority to issue regulations for the efficient enforcement of the FD&C Act.

IV. Comments on the Proposed Rule and FDA Response

A. Introduction

This section summarizes comments we received in response to the proposed rule and our response to those comments. We received approximately 440 individual comments on the proposed rule by the close of the comment period, each addressing one or more topics. Approximately 400 of those comments resulted from write-in campaigns. Several of the comments were signed by more than one person or group. We received comments from veterinary, feed manufacturing, and livestock production associations, as well as consumer advocacy groups and individuals, and a member of Congress. Some comments support our rulemaking and our ongoing efforts to address the problem of antimicrobial resistance, while others express concern about the manner in which data are going to be collected, interpreted, and used. Some comments offer suggestions for specific changes for us to consider making to the subject regulations. We considered the comments we received in response to the proposed rule in preparing this final rule. After considering these comments, we are not making any changes to the codified language that was included in the proposed rule.

In sections IV.B. through IV.D., we describe the comments received on the proposed rule and provide our responses. To make it easier to identify the comments and our responses, the word "Comment," in parentheses, appears before the comment's description, and the word "Response," in parentheses, appears before our response. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number and, in some cases, we have separated different subjects discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

B. Description of General Comments and FDA Response

Many comments make general remarks supporting or opposing the proposed rule without focusing on a particular proposed provision. In the following paragraphs of this section, we discuss and respond to such general comments.

(Comment 1) Many comments from a variety of stakeholders, including veterinary, feed manufacturing, and animal production associations, drug manufacturing firms, as well as consumer advocacy groups and individuals, generally support our efforts aimed at gathering reliable information on the use of antimicrobials in food-producing animals, improving the manner in which that information is reported, enhancing our understanding of antimicrobial animal drug sales intended for use in specific food-producing animal species, and working alongside our Federal partners to share data for the purpose of minimizing antimicrobial resistance.

(Response 1) We appreciate the general support that the comments express. As noted in section II.A., this rulemaking is part of a larger effort to address the problem of antimicrobial resistance. The rule is expected to provide us with information on the sales of antimicrobials intended for use in food-producing animals, including information regarding the sales of these products among the various animal species for which they are intended. Having species-specific estimates of product sales and distribution in the four major food-producing categories of animal species (cattle, swine, chickens, turkeys) will be important in supporting efforts such as NARMS, the national surveillance program that tracks trends related to antimicrobial resistance in food-producing animals and humans, and complement data on antimicrobial use collected under NAHMS. The data will also complement the data collection plan with the USDA and the CDC to obtain additional on-farm use and resistance data. The collection of data from multiple sources, including enhanced sales data, is needed to provide a comprehensive and science-based picture of antimicrobial drug use and resistance in animal agriculture. Such information will further enhance our ongoing activities related to slowing the development of antimicrobial resistance to help ensure that safe and effective antimicrobial new animal drugs will remain available for use in human and animal medicine. We intend to continue working in collaboration with the USDA, the CDC, the pharmaceutical industry, veterinary organizations, animal producers, and other stakeholders to address this important public health issue.

C. Comments on Our Legal Authority and FDA Response

(Comment 2) Some comments suggest that we lack the legal authority to require drug sponsors to report species-specific distribution estimates.

Specifically, one comment suggests that we lack authority under section 512(*l*)(3) of the FD&C Act, as added by ADUFA 105, to require species-specific distribution estimates. The comment suggests that the lack of express authority in section 512(*l*)(3) of the FD&C Act to require species-specific distribution estimates thus limits our broader authority relating to the collection of records and reports concerning experiences and other information with respect to approved new animal drugs under 512(*l*)(1) of the FD&C Act, and precludes us from requiring the submission of species-specific distribution estimates under that provision as well.

Three comments suggest that in addition to lacking authority to require species-specific distribution estimates under section 512(*l*)(3) of the FD&C Act, we also lack authority under section 512(*l*)(1) of the FD&C Act because we have not made a "finding" that species-specific distribution estimates are necessary in order to facilitate a determination of whether there may be grounds for invoking the withdrawal provisions of the FD&C Act.

(Response 2) FDA acknowledges that section 512(*l*)(3) of the FD&C Act, as added by ADUFA 105, does not explicitly address species-specific distribution estimates. In requiring such estimates, we rely not on section 512(*l*)(3) but rather on our broader authority under section 512(*l*)(1) of the FD&C to collect information concerning approved and conditionally approved new animal drugs under a regulation or order issued by FDA. (See Section III. Legal Authority.) Section 512(*l*)(1) of the FD&C Act reads in relevant part, "In the case of any new animal drug for which approval of an application filed pursuant to subsection (b) or section 571 is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, of data relating to experience . . . and other data or information, received or otherwise obtained by such applicant with respect to such drug, or with respect to animal feeds bearing or containing such drug, as the Secretary may by general regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination, whether there is or may be ground for" withdrawal of approval of the new animal drug at issue. FDA therefore has the authority to establish reporting requirements applicable to approved or conditionally approved new animal drugs by regulation or order if it finds those requirements are necessary to enable it to determine, or facilitate a determination, as to whether the drugs are no longer shown to be safe, are ineffective, or are otherwise subject to withdrawal under section 512(e) of the FD&C Act.

Based on its authority under section 512(*l*)(1) of the FD&C Act, in March 2003, FDA issued regulations requiring recordkeeping and reports concerning experience with approved new animal drugs at § 514.80. Under § 514.80(b)(4), sponsors that have approved applications for new animal drugs, including sponsors of antimicrobial new animal drug products, must submit periodic drug experience reports to FDA every 6 months for the first 2 years following approval and annually thereafter. These periodic drug experience reports must contain, among other things, various types of information about the distribution of the sponsor's drug, including data concerning the quantity of the drug distributed domestically and the quantity exported. The requirement in § 514.80(b)(4) for sponsors to submit detailed distribution data concerning their approved new animal drugs predates the enactment of ADUFA 105. In enacting ADUFA 105, Congress left intact the periodic reporting requirements under § 514.80(b)(4)—including the requirement for distribution data—stating at ADUFA section 105(c) that the reporting requirements established under section 512(*l*)(3) of the FD&C Act for antimicrobial new animal drugs did not relieve the sponsors of their separate obligation to provide periodic drug experience reports to FDA under § 514.80(b)(4). In so doing, Congress clearly signaled that the reporting requirements relating to antimicrobial drugs in 512(*l*)(3) were intended to supplement rather than supplant FDA's existing authority under section 512(*l*)(1) to impose distribution data reporting requirements on the same parties covered by section 512(*l*)(3) of the FD&C Act.

Further, the scant legislative history relating to ADUFA 105 that exists supports the conclusion that in establishing section 512(*l*)(3) Congress meant to enhance, not limit, our general authority under section 512(*l*)(1) of the FD&C Act to require information about marketed new animal drug products in order to ensure their continued safety and effectiveness. For example, in his remarks to other members of Congress, Chairman of the House Energy and Commerce Subcommittee on Health, Representative Frank Pallone, Jr., stated that the ADUFA legislation he had introduced earlier that year would "improve the uniform collection and reporting of data to FDA on the sales about animal drugs that contain an antibiotic ingredient" and that it "includes language that would enhance FDA's current data collection by creating a new antimicrobial animal drug use data report for all food-producing animals. The report puts critical information in one place for FDA; otherwise, the agency would have to search through warehouses of multiple paper reports." 154 *Congressional Record* 17,287 (2008)(statement of Rep. Pallone). In remarks Representative Waxman made concerning the legislation, he stated, "The ADUFA bill we are considering includes a provision to increase the availability and accessibility of data on the amount of animal antibiotics being distributed" and that the "reauthorization [of ADUFA] has also given us an opportunity to look at providing FDA with new tools to address a related public health crisis, the problem of antibiotic resistance." 154 *Congressional Record* 17,288 (2008) (statement of Rep. Waxman). These statements made by members of Congress strongly suggest that FDA was viewed as already having the requisite legal authority under section 512(*l*) and that the reason Congress established the requirement in section 512(*l*)(3) of the FD&C Act for an additional report relating to antimicrobial new animal drugs sold for use in food-producing animals was merely to improve the efficiency of the reporting process for such drugs so that we could more effectively address the problem of resistance associated with the use of antimicrobial drugs in food animal production. In addition to improving efficiency by establishing a more uniform process for the collection of important information about approved antimicrobial new animal drugs sold or distributed for use in food-producing animals, ADUFA 105 also streamlined the process for putting these reporting requirements in place by eliminating the need for the Agency to first engage in time-consuming rulemaking activities that otherwise would have been required under section 512(*l*)(1) of the FD&C Act prior to collecting such data.

In light of what we consider to be clear evidence that Congress intended section 512(*l*)(3) of the FD&C Act to bolster rather than limit our existing authority to require information to be reported concerning approved new animal drugs, we conclude that the comment's assertion, that by establishing section 512(*l*)(3) Congress has somehow curtailed our ability to exercise authority we would otherwise have under section 512(*l*)(1), is without merit.

We now respond to the comments asserting that we may not rely on section 512(*l*)(1) of the FD&C Act absent a finding that species-specific distribution estimates are necessary in order to facilitate a determination of whether there may be grounds for invoking the withdrawal provisions of the FD&C Act. Although we stated in the proposed rule that collection of species-specific sales and distribution estimates would help to ensure "the continued availability of safe and effective antimicrobials for animals and humans," we agree that language more clearly stating our finding is appropriate. Accordingly, we find that the collection of species-specific sales and distribution estimates, in addition to other information about antimicrobial use in food-producing animals and drug resistance, is necessary to enable us to determine, or to facilitate a determination, as to whether there may be grounds for additional measures short of and, where appropriate, including withdrawal of approval or specific portions of the approval in certain instances in the future to minimize antimicrobial resistance and ensure the continued availability of safe and effective antimicrobials for use in treating animals and humans. In particular, such information is needed, among other reasons, to support ongoing efforts to promote the judicious use of antimicrobials in food-producing animals and evaluate the success of those efforts; to aid in our assessment of antimicrobial sales trends in the major food-producing animal species and our examination of how these species-specific sales trends may relate to antimicrobial resistance; and to help inform microbial food safety risk assessments. In addition, because many antimicrobial drugs are approved for use in multiple species, in those instances where we believe appropriate grounds may exist to withdraw approval, having species-specific information also will be necessary to help us determine which specific portions of the approval may need to be withdrawn.

D. Specific Comments and FDA Response

Many comments make specific remarks supporting or opposing a particular proposed provision. In this section, we discuss and respond to such comments. The order of the discussion reflects the order in the regulatory text.

(Comment 3) Several comments support our effort to eliminate duplicative reporting of sales and distribution data by sponsors of antimicrobial new animal drugs.

(Response 3) We agree with the comments and therefore, in this final rule, we are keeping language as proposed at § 514.80(b)(4)(i)(B). As described in the proposed rule (80 FR 28863 at 28871), we are providing an opportunity for sponsors of antimicrobial new animal drugs to modify the reporting period for these drug products in order to eliminate duplicative reporting of quantity marketed under current § 514.80(b)(4) and new § 514.87.

(Comment 4) Several comments support reporting of sales and distribution data but suggest modification of the proposed requirement in § 514.87(a) and (b)(1) to report the antimicrobial active ingredient. One comment suggests that we reduce the scope of what we require to be reported so that we only collect data for what it characterizes as "medically important antimicrobials." Another comment suggests that we expand the scope of what we require to be reported to include data on what the comment characterizes as live cultures and complex products "intentionally developed and marketed for antimicrobial production."

(Response 4) We have carefully considered the comments' suggested changes to the scope of reporting of the antimicrobial active ingredient. The requirement to report the antimicrobial active ingredient under § 514.87(a) reflects the requirement, under section 512(*l*)(3) of the FD&C Act, for each sponsor of a new animal drug product that is approved or conditionally approved and contains an antimicrobial active ingredient, to report to us on an annual basis the amount of each antimicrobial active ingredient in the drug product that is sold or distributed for use in food-producing animals. This includes products that are the subject of an approved NADA or abbreviated NADA, as well as products that are conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). The requirement in § 514.87(a) also incorporates the requirement from section 512(*l*)(3) of the FD&C Act for animal drug sponsors to capture in their sales and distribution data reports information regarding any distributor labeled products (see section 512(*l*)(3)(A) of the FD&C Act). We decline to implement the suggestion to limit the reporting to "medically important antimicrobials" due to the statutory reporting requirements under section 512(*l*)(3) of the FD&C Act, which apply to a new animal drug product that is approved or conditionally approved and contains an antimicrobial active ingredient *without limitation*.

With regard to the comment about live cultures and complex products, we understand the comment to be referring to products that contain one or more microorganisms. We carefully considered the issues the comment raises and are finalizing the proposed rule without change. Currently, there are no approved new animal drug products that contain microorganisms and such products do not appear in Appendix A, GFI #152 as being important in human clinical medicine (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/ucm052519.pdf*). A live culture or complex product could potentially be the subject of a NADA if because of its intended use the particular product at issue meets the statutory definition of a drug in section 201(g) of the FD&C Act (21 U.S.C. 321(g)) (an article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease or an article (other than food) intended to affect the structure or any function of the body) and the statutory definition of a new animal drug in section 201(v) of the FD&C Act. Furthermore, should a live culture or complex product be approved as a new animal drug, and should any of the active ingredients of that product be approved specifically for an antimicrobial use or be known to have antimicrobial properties, then sponsors of such an approved product would be required to submit data to us on the amount of each such ingredient in this drug product sold or distributed for use in food-producing animals.

(Comment 5) Comments on the proposed rule generally support our effort to learn more about antimicrobial resistance, but several comments disagree with our proposal to collect species-specific estimates as proposed in § 514.87(c). Several comments question the utility of the information that would result from species-specific data. Several comments suggest that it was unclear how species-specific estimates will scientifically support NARMS, or complement NAHMS. Other comments state that species-specific sales estimates are inappropriate to report because the resulting data would not constitute sound scientific data. These comments assert that such data would be inaccurate due to complications and inconsistencies of data collection, would not reflect actual usage, would be subject to misinterpretation due to lack of complete information, and would not constitute sufficient data to evaluate the impact of policies and trends in antimicrobial resistance. Other comments support our collection of species-specific sales and distribution data as proposed in § 514.87(c). These comments assert that the resulting data would be beneficial to understanding how antimicrobials are used in food-producing animals, the relationship between sales/use and antimicrobial resistance, and the impact of our policies and practices to mitigate antimicrobial resistance.

(Response 5) We have carefully considered the comments in favor of and opposing the reporting of species-specific sales and distribution data as specified in proposed § 514.87(c). We recognize the comments' concerns with regard to utility of the information but we respectfully disagree with the request to remove species-specific reporting from the rule. As we discussed in our response to Comment 1, having species-specific estimates of product sales and distribution for use in the four major food-producing categories of animal species (cattle, swine, chickens, turkeys) will be essential in supporting efforts to assess antimicrobial drug use and resistance in animal agriculture. This additional sales and distribution data will help inform microbial food safety risk assessments by providing a better indication of the extent to which a drug or drug class is used in a specific food animal species by a specific route of administration. Aggregate sales data do not provide this information and are more subject to misinterpretation.

As noted in our response to comment 1, we also intend to consider estimates of species-specific sales and distribution data in conjunction with on-farm species-specific data on antimicrobial use, such as that collected under NAHMS. We expect such data to help us better understand the extent of antimicrobial use in the various major food animal species and provide additional context as we examine resistance data, such as those collected under NARMS. Data from multiple sources are needed to provide a comprehensive and science-based picture of antimicrobial drug use and resistance in animal agriculture. Such information is critical to our ongoing activities related to slowing the development of antimicrobial resistance and ensuring the continued availability of safe and effective antimicrobials for use in treating animals and humans. For the reasons discussed here and in response to comments 1 and 2, we are retaining the requirement for sponsors to provide species-specific sales and distribution estimates as set forth in § 514.87(c).

(Comment 6) Several comments we received suggest that, instead of collecting species-specific sales estimates as proposed in § 514.87(c), antimicrobial use in food-producing animals should be monitored at the farm level. Some comments raise concerns about using sales data alone in analyses of antimicrobial drug use and resistance. There were multiple comments requesting that we collaborate with the USDA and the CDC to enhance existing collection efforts of on-farm antimicrobial use data that are accurate, detailed, and quantitative to supplement species-specific estimates of product sales. The commenters further request that we use the data to evaluate the impact of policies, understand the relationship between usage and resistance trends, and construct targeted interventions.

(Response 6) We disagree with the request to remove species-specific reporting from the rule for the reasons discussed in our responses to comments 1, 2, and 5. We recognize that gathering information on the way medically important antimicrobials are used in food-producing animals is essential to: (1) Assess the rate at which sponsors are voluntarily revising their FDA-approved labeled use conditions to promote the judicious use of medically important antimicrobial drugs in food-producing animals, (2) help gauge the success of antibiotic stewardship efforts and guide their continued evolution and optimization, and (3) assess associations between antibiotic use practices and resistance.

We agree with the suggestion to collaborate with the USDA and the CDC to enhance existing collection efforts of on-farm antimicrobial use data. We are collaborating with the USDA and the CDC to develop a plan for collecting additional on-farm data on antimicrobial use and resistance. Such data are intended to supplement existing information, including data on the quantity of antimicrobials sold or distributed for use in food-producing animals (reported under § 514.87 as established under this final rule) and data on antimicrobial use and resistance, for example, data collected under the NAHMS and NARMS programs. Data from multiple sources are needed to provide a comprehensive and science-based picture of antimicrobial drug use and resistance in animal agriculture and ensure the continued availability of safe and effective antimicrobials for use in treating animals and humans. Each source provides unique species-specific data; collecting species-specific sales and distribution data will support evaluation of other species-specific data, such as data collected under the NAHMS and NARMS programs.

As discussed in section I.A. Purpose of the Final Rule, in December 2013, we published GFI #213, a guidance that calls on sponsors of approved medically important antimicrobial new animal drugs administered through medicated feed or water to voluntarily make changes to remove production uses (growth promotion and feed efficiency) from their product labels and bring the remaining therapeutic uses of these products (to treat, control, or prevent disease) under the oversight of a veterinarian by the end of December 2016. The sales data collected under this final rule will assist us in assessing the rate at which sponsors are voluntarily revising their FDA-approved labeled use conditions to align with GFI #213.

As also discussed in section I.A., the National Action Plan, issued by the White House in March 2015, is intended to guide the activities of the U.S. Government as well as the actions of public health, health care, and veterinary partners in a common effort to address the urgent and serious public health threat of drug-resistant bacterial infections. Objective 2.4 of the National Action Plan is to enhance monitoring of antibiotic resistance patterns, as well as antibiotic sales, usage, and management practices, at multiple points in the production chain for food animals and retail meat. Sub-Objective 2.4.3 of the National Action Plan calls for the USDA and FDA to seek public input on a plan for collecting drug use and resistance data on farms. We are continuing to work with both the USDA and the CDC to develop this plan. A joint public meeting was held on September 30, 2015, to provide an opportunity for public comment on possible approaches for collecting additional antimicrobial drug use data.

(Comment 7) Some comments suggest that, instead of or in addition to collecting the species-specific estimates that would be required as proposed in § 514.87(c), we should collect and report the information already provided in veterinary feed directive (VFD) orders and information related to these orders.

(Response 7) The VFD regulation outlines the process for authorizing use of VFD drugs (animal drugs intended for use in or on animal feed that require the supervision of a licensed veterinarian) and provides veterinarians in all States with a framework for authorizing the use of these VFD drugs, including medically important antimicrobials, when needed for specific animal health purposes. The VFD regulation provides that all distributors, regardless of whether or not they manufacture animal feeds bearing or containing VFD drugs, must keep records of receipt and distribution for 2 years from the date of issuance in accordance with 21 CFR 558.6(c)(3).

We appreciate the commenters' suggestions that we gather the information provided in VFD orders and information related to these orders. While there are some limitations to the gathering of such information, we agree that this information has value. For that reason, we continue to consider options to capture such information.

We believe that VFD records are an important source of information for assessing veterinary oversight of VFD drugs and compliance with the VFD regulation. These records are required to be made available to FDA during inspections. Therefore, as part of these inspectional activities, we intend to use these records to review compliance with the VFD regulations, to ensure that the VFD drug and VFD feed are used according to the conditions and indications of use as specified in the approval, conditional approval, or index listing, and within the supervision and oversight of a licensed veterinarian.

(Comment 8) One comment generally supports the collection of sales data, but suggests that we provide a specific methodology for making species-specific sales estimates to reduce the likelihood of inaccurate reporting of these estimates.

(Response 8) We appreciate the commenter's interest in obtaining the most accurate data and their suggestion that we identify a specific methodology for developing species-specific sales estimates. We appreciate and agree with the need to gather the best data. We also recognize that the sponsors who are required to report have different ways of managing their businesses, including different ways of capturing sales and distribution data. In other words, different sponsors gather sales data on similar drug products in different ways and, sometimes, the same sponsor may gather sales data on different drug products within their own drug product portfolio in different ways. Because of these differences, it seems likely that sponsors' methods of gathering these sales data will vary considerably.

We believe that animal drug sponsors currently have access to information obtained in the ordinary course of their business (for example, through proprietary marketing analyses) that can be used to formulate the methodology to estimate the percentage of annual product sales that are sold or distributed domestically for use in any of the four major food-producing species that appear on the approved product label. In addition, sponsors have different business models that determine the manner in which they gather sales data; thus, specific methodologies to accurately estimate species-specific sales will likely differ among sponsors. As we finalize this rule and establish the requirement that sponsors estimate species-specific sales for the major food-producing species, we recognize that specifying a uniform methodology for estimating species-specific sales might cause a firm to provide estimates in a manner not best suited to their individual business processes, leading the firm to expend more time to provide species-specific sales estimates that may be less accurate than those derived from utilizing their own methodology. The provision at § 514.87(c) requires that firms provide species-specific sales estimates. We expect these estimates to be based on the methodology that provides the sponsor's most accurate estimate of these sales.

Also, as we noted in the proposed rule, this provision is not intended to require animal drug sponsors to conduct studies of on-farm drug use practices (80 FR 28863 at 28866). For these reasons, we decline at this time to provide a standard methodology for developing species-specific sales estimates.

(Comment 9) One comment suggests that we should not collect the species-specific sales and distribution estimates that we proposed to require under § 514.87(c) until legal challenges over disclosure of confidential commercial information are resolved.

(Response 9) We have carefully considered the issues regarding the protection of confidential commercial information. As we stated in the proposed rule, "[s]ince it is likely that many sponsors would consider their species-specific sales and distribution estimates as proprietary information, and that such estimates may often be derived from proprietary marketing analyses, FDA would, as described in proposed paragraph (e) [of § 514.87], consider the species-specific information reported by individual sponsors under paragraph (c) [of § 514.87] to be confidential business information consistent with section 512 (l)(3) of the FD&C Act and this Agency's regulations at 21 CFR 20.61." (80 FR 28863 at 28867). In recognition of this concern, we further stated in the proposed rule that, consistent with the statute, FDA would not "independently report those antimicrobial classes with fewer than three distinct sponsors, and would further require that, in reporting the antimicrobial drug sales and distribution data it receives from drug sponsors, FDA must do so in a manner consistent with protecting both national security and confidential business information (see section 512(*l*)(3)(E)(i) and (ii) of the FD&C Act)." (80 FR 28863 at 28867.) After considering the comments received in response to the proposed rule, we conclude there are sufficient safeguards in place to ensure the protection of confidential commercial information, including the species-specific information required to be submitted by individual firms in accordance with § 514.87(c). Therefore, we are not removing the requirement for species-specific sales and distribution estimates under § 514.87(c) for confidentiality reasons as the comment requests and are finalizing the provision at § 514.87(e) relating to the confidentiality of sales and distribution data as proposed.

(Comment 10) One comment suggests that we modify proposed § 514.87(c) to include fish on the list of animal species categories for which sponsors are required to report species-specific estimates.

(Response 10) We carefully considered the suggestion to include fish on the list of animal species categories for which species-specific estimates must be submitted and decided to retain the categories that were identified in proposed § 514.87(c) without modification. We consider the most significant risk to the public health associated with antimicrobial resistance related to the use of antimicrobial drugs in animal agriculture to be human exposure to food containing antimicrobial-resistant bacteria resulting from the exposure of food-producing animals to antimicrobials. However, when considering the foodborne pathway, the potential for human exposure to antimicrobial-resistant pathogens currently is significantly less for food derived from minor species than it is for food derived from the food-producing major species. The exposure potential is less in part because the amount of food derived from cattle, swine, and poultry is much greater than the amount of food derived from sheep, goats, and aquaculture, the minor species from which the most food is derived (Refs. 1 and 2). In the United States, human foodborne illnesses are attributed mostly to plant and land animal commodities (Ref. 3). Furthermore, the majority of illnesses attributed to fish exposure are intoxications rather than bacterial illnesses (Ref. 4). Additionally, most fish and seafood consumed in the United States are imported products (Ref. 5).

In addition, as discussed in the proposed rule, we believe having species-specific estimates of product sales and distribution for use in the four major food-producing categories of animal species (cattle, swine, chickens, turkeys) will be important in supporting efforts such as NARMS, a surveillance program that monitors trends in antimicrobial resistance among foodborne bacteria from humans, retail meats, and animals. NARMS retail meat and animal sampling focus on the same four major food-producing species included in § 514.87(c). NARMS does not currently have a surveillance system for antimicrobial resistance pathogens from aquaculture products. Since there is currently limited resistance data related to minor food-producing animals (including fish) and companion animals, requiring estimates of these additional species at this time would cause additional burden without clear benefit to our understanding of antimicrobial resistance. NARMS does collect some resistance data on import isolates of *Salmonella*, which include some seafood isolates; however, because these data are from imports, data on domestic distribution and sales of antimicrobials for use in aquaculture would not be informative to NARMS and our overall efforts to assess antimicrobial use and resistance domestically.

(Comment 11) One comment suggests that we modify proposed § 514.87(c) to remove the category "other species/unknown" and replace it with two categories, "other species" and "unknown", so that those estimates could be independently reported.

(Response 11) We appreciate the suggestion to collect sales data on both "other species" and "unknown"; however, we have determined that there is not a clear benefit to having this information reported separately at this time. As noted in our response to comment 1, one of the reasons we believe that having species-specific estimates of product sales and distribution in the four major food-producing categories of animal species (cattle, swine, chickens, turkeys) will be important is to support data we obtain from NARMS. NARMS retail meat and animal sampling focus on the same four major food-producing species. The category "other species/unknown" will be used to capture the percentage of each new animal drug product that was sold or distributed for use in animal species other than the four major food-producing species or otherwise unknown to the reporting drug sponsor. Since there is currently limited resistance data related to minor food-producing animals and companion animals, requiring estimates of these additional species would cause additional burden without clear benefit.

(Comment 12) One comment suggests that we should not report species-specific information in our annual reports, arguing that by doing so we would disclose confidential commercial information in violation of proposed § 514.87(e).

(Response 12) As discussed in our response to comment 9, we have carefully considered the issues regarding the protection of confidential commercial information and the disclosure of species-specific information in our annual summary reports. After considering the comments received in response to the proposed rule, we are not persuaded that reporting species-specific information in our annual summary reports will lead to the disclosure of confidential commercial information. We will only provide sales data in our summary reports that has been aggregated to avoid disclosing confidential commercial information. We are finalizing the rule as proposed, which includes safeguards for the protection of confidential business information related to the reporting of species-specific estimates of sales by drug sponsors, consistent with section 512(*l*)(3)(E) of the FD&C Act and our disclosure regulations at § 20.61.

(Comment 13) Several comments suggest we report a wider scope of information in our annual summary reports that would be required under proposed § 514.87(f). One comment suggests we should provide more detailed information on why antimicrobials are used; for example, to distinguish use for growth promotion or disease prevention from use for disease control or treatment. Another comment suggests that we should collaborate with the USDA and the CDC to develop a communication plan to explain the implications of collected data for human and animal health.

(Response 13) We appreciate the comment that we report a wider scope of information in our annual summary reports. As required by ADUFA 105, sponsors of the affected antimicrobial new animal drug products began submitting their sales and distribution data to us on an annual basis, and we have published summary reports of such data for each calendar year beginning with 2009. Starting in 2014, we increased the amount of data provided in our annual summary reports by including "additional data tables on the importance of each drug class in human medicine, the approved routes of administration for these antimicrobials, whether these antimicrobials are available over-the-counter or require veterinary oversight, and whether the antimicrobial drug products are approved for therapeutic purposes, or both therapeutic and production purposes." (80 FR 28863 at 28867.)

Sponsors currently are not required to report sales and distribution data broken out by the specific purpose for which these drug products are used. Many sales of antimicrobials by drug sponsors are to distributors who, in turn, may sell to other distributors or to end users (*e.g.*, feed mills or animal producers). Thus, this type of information (*i.e.*, how the drug product sold by the sponsor is ultimately used in a labeled species) is generally not even known by the drug sponsor. Also, as we note in our response to comment 8, reporting species-specific estimates of sales and distribution under § 514.87 is not intended to require animal drug sponsors to conduct studies of on-farm drug use practices (80 FR 28863 at 28866) (*e.g.*, use in particular species for particular indications). Because the sales and distribution data we are collecting from drug sponsors does not include information about how the drugs were ultimately used, such data also will not be included in our annual summary reports.

As we note in our response to comments 1, 5, and 6, we recognize that data from multiple sources are needed to provide a comprehensive and science-based picture of antimicrobial drug use and resistance in animal agriculture. We are collaborating with the USDA and the CDC to develop a plan for collecting additional on-farm data on antimicrobial use and resistance. Such data are intended to supplement existing information, including data on the quantity of antimicrobials sold or distributed for use in food-producing animals (reported under § 514.87 as established under this final rule) and data on antimicrobial use and resistance, for example, data collected under the NAHMS and NARMS programs.

We appreciate the comment suggesting that we collaborate with the USDA and the CDC to develop a communication plan to explain the implications of collected data for human and animal health. We will also continue to work with the USDA, the CDC, and other government agencies to analyze and report on the implications of the collected data.

(Comment 14) We received several comments suggesting modifications to how we report the data that we proposed to collect. One comment suggests we should make as much of this data as possible available to the public, while protecting confidential business information. Other comments suggest we should publish monthly sales data and State- or regional-level data.

(Response 14) We plan to report aggregate data on domestic sales and distribution for the entire reporting year, but not to include separate information for each month of the reporting year. ADUFA 105 requires drug sponsors to report sales and distribution data to us broken out by month; however, antimicrobial drug products may be used at any time up to several years after distribution. As noted in the proposed rule, we consider monthly fluctuations in drug product sales to be of limited value in reflecting when products may actually be administered to animals and interpreting antimicrobial resistance trends, since much of monthly patterns are more reflective of distribution and business practices rather than of any fluctuations in use by or sales to the end user (80 FR 28863 at 28867).

Regarding the suggestion that we report State- or regional-level data, sponsors are not required to report sales and distribution data broken out by States or regions. As we note in our response to comment 13, many sales of antimicrobials by drug sponsors are to distributors who, in turn, may sell to other distributors or to end users (*e.g.,* feed mills or animal producers). Thus, geographic distribution of sales as detailed as State- or regional-level sales data are generally not even known by the drug sponsors. For these reasons, we decline to make the modifications to our summary reports suggested by the commenters and are finalizing the language in § 514.87(f) as proposed.

(Comment 15) Several comments ask that we adhere to the proposed deadline of December 31st of the following year for the annual reporting of sales data.

(Response 15) We plan to publish our annual summary report for each calendar year by December 31st of the following year. We note that this deadline is widely supported by advocacy groups and some animal industry groups. Adhering to this deadline would provide up-to-date data to the stakeholders and would be necessary to inform current regulatory decisions.

In addition to the comments specific to this rulemaking that we addressed previously in this preamble, we received general comments expressing views about the use of antimicrobials, antimicrobial resistance, animal health and husbandry practices, the expansion of NARMS sampling, the enhancement of on-farm collection of information, and human antimicrobial drug use. These comments express broad policy views and do not address specific points related to this rulemaking. Therefore, these general comments do not require a response.

V. Effective and Compliance Dates

This rule is effective July 11, 2016. Sponsors must comply with the reporting requirements in the final rule when submitting their reports covering the period of calendar year 2016.

VI. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. We believe that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the final rule will impose average annualized costs that amount to less than 0.01 percent of average annual revenues on those small entities that we expect to sponsor NADAs, we have determined that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $144 million, using the most current (2014) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

The Economic Analysis of Impacts of the final rule performed in accordance with Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act is available at *http://www.regulations.gov* under the docket number(s) for this final rule and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the one-time and annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Antimicrobial Animal Drug Distribution Reports and Recordkeeping (21 CFR part 514)—OMB Control No. 0910–0659—Revision

Description: The ADUFA 105 legislation was enacted in 2008 to address the problem of antimicrobial resistance and to help ensure that we have the necessary information to examine safety concerns related to the use of antibiotics in food-producing animals. ADUFA 105 amended section 512 of the FD&C Act to require that sponsors of approved or conditionally approved applications for new animal drugs containing an antimicrobial active ingredient submit an annual report to us on the amount of each such ingredient in the drug that is sold or distributed for use in food-producing animals. Each report must specify: (1) The amount of each antimicrobial active ingredient by container size, strength, and dosage form; (2) quantities distributed domestically and quantities exported; and (3) a listing of the target animals, indications, and production classes that are specified on the approved label of the product. The report must cover the period of the preceding calendar year and include separate information for each month of the calendar year. This rule also includes an additional reporting provision intended to further enhance our understanding of antimicrobial animal drug sales intended for use in specific food-producing animal species. ADUFA 105 also requires us to publish annual summary reports of the data we receive. In accordance with ADUFA 105, sponsors of the affected antimicrobial new animal drug products have submitted their sales and distribution data to us, and we have published summaries of such data, for each calendar year since 2009. Collection of information on the amount of animal antimicrobials being distributed, including species-specific information, is necessary to support our ongoing efforts to encourage the judicious use of antimicrobials in food-producing animals to help ensure the continued availability of safe and effective antimicrobials for animals and humans. We intend to use these data to supplement existing information, including data collected under the NAHMS and NARMS programs. Data from multiple sources are needed to provide a comprehensive and science-based picture of antimicrobial drug use and resistance in animal agriculture.

The final rule amends our records and reports regulation in part 514 to include the following:

- Procedures relating to the submission to us of annual sales and distribution data reports by sponsors of approved or conditionally approved antimicrobial new animal drug products sold or distributed for use in food-producing animals.
- Procedures relating to the requirement that such sponsors submit species-specific estimates of product sales as a percentage of total sales.
- Procedures applicable to our preparation and publication of summary reports on an annual basis based on the sales and distribution data we receive from sponsors of approved antimicrobial new animal drug products. The final rule includes specific parameters for the content of the annual summary reports as well as provisions intended to protect confidential business information and national security, consistent with ADUFA 105 and this Agency's regulations at § 20.61.
- Provisions that give sponsors of approved or conditionally approved antimicrobial new animal drug products that are sold or distributed for use in food-producing animals the opportunity to avoid duplicative reporting of product sales and distribution data to us under part 514.

The final rule codifies in part 514 the reporting requirements established in ADUFA 105 and includes an additional reporting provision intended to enhance our understanding of new animal drug sales intended for use in specific food-producing animal species. The final rule also revises Form FDA 3744 by providing for species-specific information to be reported. Consequently FDA is revising the reporting requirements in the associated information collection. However, the final rule does not change the recordkeeping provisions already approved under OMB control number 0910–0659.

Therefore, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(B)), we requested public comment on the information collection provisions of the proposed rule (80 FR 28863 at 28868). We received some public comments on the information collection topics solicited in the proposed rule as addressed previously in section IV (supporting our effort to eliminate duplicative reporting, suggesting specific modifications and different approaches, questioning or supporting the utility of the information, suggesting we wait for resolution of the current legal disputes over disclosure of confidential commercial information and suggesting we provide a specific methodology for making species-specific sales estimates). However, none of the comments suggests that we modify our burden estimates.

Description of Respondents: Animal Drug Manufacturers (Sponsors).

The total annual estimated burden for this collection of information is 9,759 hours and 538 responses. This reflects a marginal increase in burden to that currently approved under OMB control number 0910–0659 resulting from the revised reporting provisions associated with the final rule. At the same time, a review of our records reflects an overall increase in respondents to the program from 26 to 27 and we have therefore adjusted our respondent numbers accordingly.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ONE-TIME NUMBER REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
514.87(a) through (e)—Administrative Review of the Rule: Sponsors With Active Applications	20	1	20	24	480
514.87(a) through (e)—Administrative Review of the Rule: Sponsors With Inactive Applications	7	1	7	1	7
514.87(c)—Report Species-Specific Estimate of Percent of Products Distributed Domestically	20	7.50	150	2	300
Total					787

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of the average burden per response on our recent experience with the existing antimicrobial animal drug distribution reports program. We base our estimate of the number of affected respondents reported in tables 1 and 2 on a review of our records of sponsors with active and inactive applications, which show that in the past 3 years the number of sponsors have increased from 26 to 27.

Table 1 shows the estimated one-time burden associated with the new reporting provisions of this final rule. We expect that current sponsors of approved or conditionally approved applications for antimicrobial new animal drugs sold or distributed for use in food-producing animals will need to review the provisions of the final rule and develop a compliance plan. Based on our records, we estimate there are a total of 27 sponsors, where 20 sponsors hold active (*i.e.*, currently marketed) applications and 7 sponsors hold only inactive applications, as reflected in rows 1 and 2. We estimate that the 20 sponsors with active applications will take 24 hours to complete the review and develop a compliance plan. We expect that the seven sponsors with inactive applications will take 1 hour to complete the review and will not need to develop a compliance plan.

We also estimate that the 20 sponsors with 150 applications will each spend approximately 2 hours to discuss and settle upon a method to calculate the species-specific information required under § 514.87(c). This estimate is reflected in row 3.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
514.87(a) through (e)—Annual Reports for Sponsors With Active Applications—Paper Submission	3744	10	7.5	75	62	4,650
514.87(a) through (e)—Annual Reports for Sponsors With Active Applications—Electronic Submission	3744	10	7.5	75	52	3,900
514.87(a) through (e)—Annual Reports for Sponsors With Inactive Applications—Paper Submission	3744	4	26.5	106	2	212
514.87(a) through (e)—Annual Reports for Sponsors With Inactive Applications—Electronic Submission	3744	3	35	105	2	210
Total						8,972

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 2 shows the estimated recurring annual reporting burden associated with the final rule. While we expect new § 514.87(c) will require 3 burden hours resulting from including species-specific estimates, we believe 1 hour will be saved by eliminating the requirement for sponsors to calculate the amount of antimicrobial active ingredients associated with their monthly product sales and distribution data (§ 514.80(b)(4)(i)(A)). Consequently, we estimate that the 20 sponsors with active applications will each expend approximately 2 additional reporting hours annually for new § 514.87. Because the Agency, upon implementation of the rule, will accept both paper and electronic submissions, and we assume that half of the respondents will report electronically, we estimate 10 respondents for each submission method as shown in rows 1 and 2.

While we estimate no increase in burden for the seven sponsors of inactive applications, we similarly will accept both paper and electronic submissions. Accordingly we have reported, unchanged, the 2 hours of burden already approved under OMB control number 0910–0659 in rows 3 and 4.

This final rule also refers to other currently approved collections of information found in our regulations. These collections of information are subject to review by OMB under the Paperwork Reduction Act of 1995. The collections of information in § 514.80 are approved under OMB control number 0910–0284. The collections of information in 21 CFR 211.196 are approved under OMB control number 0910–0139.

The information collection provisions of this final rule have been submitted to OMB for review as required by section 3507(d) of the Paperwork Reduction Act of 1995. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

X. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m. Monday through Friday; they are also available electronically at *http://www.regulations.gov*. FDA has verified the Web site addresses, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. USDA, "Livestock & Meat Domestic Data," *http://www.ers.usda.gov/data-products/livestock-meat-domestic-data*.
2. "Food Fish Production and Sales by Species, by Size Category, by State and United States: 2005," *http://www.agcensus.usda.gov/Publications/2002/Aquaculture/aquacen2005_08.pdf*.
3. Painter, J. A., R. M. Hoekstra, T. Ayers, et al., "Attribution of Foodborne Illnesses, Hospitalizations, and Deaths to Food Commodities by Using Outbreak Data, United States, 1998–2008," *Emerging Infectious Diseases*, 19(3):407–415, 2013.
4. Gould, L. H., K. A. Walsh, A. R. Vieira, et al., "Surveillance for Foodborne Disease Outbreaks—United States, 1998–2008,"

Morbidity and Mortality Weekly Report. Surveillance Summaries, 62(2):1–34, 2013.

5. "Aquaculture in the United States," *http://www.nmfs.noaa.gov/aquaculture/aquaculture_in_us.html.*

List of Subjects in 21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 514 is amended as follows:

PART 514—NEW ANIMAL DRUG APPLICATIONS

■ 1. The authority citation for part 514 is revised to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 354, 356a, 360b, 360ccc, 371, 379e, 381.

■ 2. In § 514.80, revise the fifth sentence of paragraph (b)(4) introductory text and paragraph (b)(4)(i) to read as follows:

§ 514.80 Records and reports concerning experience with approved new animal drugs.

* * * * *

(b) * * *

(4) * * * The yearly periodic drug experience reports must be submitted within 90 days of the anniversary date of the approval of the NADA or ANADA. * * *

(i) *Distribution data.* (A) Information about the distribution of each new animal drug product, including information on any distributor-labeled product. This information must include the total number of distributed units of each size, strength, or potency (*e.g.,* 100,000 bottles of 100 5-milligram tablets; 50,000 10-milliliter vials of 5-percent solution). This information must be presented in two categories: Quantities distributed domestically and quantities exported.

(B) Applicants submitting annual sales and distribution reports for antimicrobial new animal drug products under § 514.87 have the option not to report distribution data under paragraph (b)(4)(i)(A) of this section for the approved applications that include these same products, but only provided each of the following conditions are met:

(*1*) Applicants must have submitted complete periodic drug experience reports under this section for such applications for at least 2 full years after the date of their initial approval.

(*2*) Applicants must ensure that the beginning of the reporting period for the annual periodic drug experience reports for such applications is January 1. For applications that currently have a reporting period that begins on a date other than January 1, applicants must request a change in reporting submission date such that the reporting period begins on January 1 and ends on December 31, as described in paragraph (b)(4) of this section.

(*3*) Applicants that change their reporting submission date must also submit a special drug experience report, as described in paragraph (b)(5)(i) of this section, that addresses any gaps in distribution data caused by the change in date of submission.

(*4*) Applicants who choose not to report under paragraph (b)(4)(i)(A) of this section must ensure that full sales and distribution data for each product approved under such applications are alternatively reported under § 514.87, including products that are labeled for use only in nonfood-producing animals.

* * * * *

■ 3. Add § 514.87 to subpart B to read as follows:

§ 514.87 Annual reports for antimicrobial animal drug sales and distribution.

(a) The applicant for each new animal drug product approved under section 512 of the Federal Food, Drug, and Cosmetic Act, or conditionally approved under section 571 of the Federal Food, Drug, and Cosmetic Act, and containing an antimicrobial active ingredient, must submit an annual report to FDA on the amount of each such antimicrobial active ingredient in the drug that is sold or distributed in the reporting year for use in food-producing animal species, including information on any distributor-labeled product.

(b) This report must identify the approved or conditionally approved application and must include the following information for each new animal drug product described in paragraph (a) of this section:

(1) A listing of each antimicrobial active ingredient contained in the product;

(2) A description of each product sold or distributed by unit, including the container size, strength, and dosage form of such product units;

(3) For each such product, a listing of the target animal species, indications, and production classes that are specified on the approved label;

(4) For each such product, the number of units sold or distributed in the United States (*i.e.,* domestic sales) for each month of the reporting year; and

(5) For each such product, the number of units sold or distributed outside the United States (*i.e.,* quantities exported) for each month of the reporting year.

(c) Each report must also provide a species-specific estimate of the percentage of each product described in paragraph (b)(2) of this section that was sold or distributed domestically in the reporting year for use in any of the following animal species categories, but only for such species that appear on the approved label: Cattle, swine, chickens, turkeys. The total of the species-specific percentages reported for each product must account for 100 percent of its sales and distribution; therefore, a fifth category of "other species/unknown" must also be reported.

(d) Each report must:

(1) Be submitted not later than March 31 each year;

(2) Cover the period of the preceding calendar year; and

(3) Be submitted using Form FDA 3744, "Antimicrobial Animal Drug Distribution Report."

(e) Sales and distribution data and information reported under this section will be considered to fall within the exemption for confidential commercial information established in § 20.61 of this chapter and will not be publicly disclosed, except that summary reports of such information aggregated in such a way that does not reveal information that is not available for public disclosure under this provision will be prepared by FDA and made available to the public as provided in paragraph (f) of this section.

(f) FDA will publish an annual summary report of the data and information it receives under this section for each calendar year by December 31 of the following year. Such annual reports must include a summary of sales and distribution data and information by antimicrobial drug class and may include additional summary data and information as determined by FDA. In order to protect confidential commercial information, each individual datum appearing in the summary report must:

(1) Reflect combined product sales and distribution data and information obtained from three or more distinct sponsors of approved products that were actively sold or distributed that reporting year, and

(2) Be reported in a manner consistent with protecting both national security and confidential commercial information.

Dated: May 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–11082 Filed 5–10–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–417]

Schedules of Controlled Substances: Placement of UR-144, XLR11, and AKB48 into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Drug Enforcement Administration places (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR-144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48), including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, into schedule I of the Controlled Substances Act. This scheduling action is pursuant to the Controlled Substances Act which requires that such actions be made on the record after opportunity for a hearing through formal rulemaking. This action imposes the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle UR-144, XLR11, or AKB48.

DATES: Effective: May 11, 2016.

FOR FURTHER INFORMATION CONTACT: Barbara J. Boockholdt, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the "Controlled Substances Act" and the "Controlled Substances Import and Export Act," respectively, and are collectively referred to as the "Controlled Substances Act" or the "CSA" for the purposes of this action. 21 U.S.C. 801–971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II.

The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring an adequate supply is available for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, each controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c) and the current list of scheduled substances is published at 21 CFR part 1308. 21 U.S.C. 812(a).

Pursuant to 21 U.S.C. 811(a)(1), the Attorney General may, by rule, "add to such a schedule or transfer between such schedules any drug or other substance if he . . . finds that such drug or other substance has a potential for abuse, and . . . makes with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed . . . ." The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA, 28 CFR 0.100, who in turn has redelegated that authority to the Deputy Administrator of the DEA, 28 CFR part 0, appendix to subpart R.

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on her own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS); [1] or (3) on the petition of any interested party. 21 U.S.C. 811(a). This action was initiated by the former DEA Administrator on her own motion and is supported by a recommendation from the Assistant Secretary of the HHS and an evaluation of all other relevant data by the DEA. This action imposes the regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles, or proposes to handle, UR–144, XLR11, or AKB48.

Background

On April 12, 2013, the DEA published a notice of intent to temporarily place (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR-144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) into schedule I pursuant to the temporary scheduling provisions of the CSA. 78 FR 21858. On May 16, 2013, the DEA published a final order amending 21 CFR 1308.11(h) to temporarily place these three synthetic cannabinoids into schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 78 FR 28735. That final order was effective on the date of publication, and was based on findings by the DEA that the temporary scheduling of these three synthetic cannabinoids was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). Section 201(h)(2) of the CSA requires that the temporary control of these substances expire two years from the effective date of the scheduling order, or on May 15, 2015. 21 U.S.C. 811(h)(2). However, the CSA also provides that the temporary scheduling may be extended for up to one year during the pendency of proceedings under 21 U.S.C. 811(a)(1). *Id.* Accordingly, on May 14, 2015, the DEA published a notice of proposed rulemaking (NPRM) to permanently control UR-144, XLR11, and AKB48 in schedule I of the CSA. 80 FR 27611. Specifically, the DEA proposed to add these substances to 21 CFR 1308.11(g), cannabimimetic agents. On May 15, 2015, the DEA extended the temporary scheduling of UR-144, XLR11, and AKB48 by one year, until May 15, 2016. 80 FR 27854. On March 22, 2016, the DEA published a corrected notice of proposed rulemaking, proposing the placement of these substances as hallucinogenic substances under 21 CFR 1308.11(d), and providing an opportunity to comment on this proposed change. 81 FR 15188.

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[1] As set forth in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993. Accordingly, all subsequent references to "Secretary" have been replaced with "Assistant Secretary."

DEA and HHS Eight Factor Analyses

On May 11, 2015, the HHS provided the DEA with three scientific and medical evaluation documents prepared by the FDA entitled "Basis for the recommendation to place 1-pentyl-1H-indol-3-yl-2,2,3,3-tetramethylcyclopropyl methanone (UR-144) and its salts in Schedule 1 of the Controlled Substances Act (CSA);" "Basis for the recommendation to place 1-(5-fluoro-pentyl)-1H-indol-3-yl 2,2,3,3-tetramethylcyclopropyl methanone (XLR11) and its salts in Schedule 1 of the Controlled Substances Act (CSA);" and "Basis for the recommendation to place (N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide) (AKB48; APINACA) and its salts in Schedule 1 of the Controlled Substances Act (CSA)." After considering the eight factors in 21 U.S.C. 811(c), including consideration of each substance's abuse potential, legitimate medical use, and dependence liability, the Assistant Secretary of the HHS recommended that UR-144, XLR11, and AKB48 be controlled in schedule I of the CSA. In response, the DEA conducted its own eightfactor analysis of UR-144, XLR11, and AKB48. The DEA and HHS analyses are available in their entirety in the public docket for this rule (DEA–2015–0007/agency Docket Number DEA–417) at *http://www.regulations.gov* under "Supporting Documents."

Determination To Schedule UR-144, XLR11, and AKB48

After a review of the available data, including the scientific and medical evaluations and the scheduling recommendations from the HHS, the DEA published an NPRM entitled "Schedules of Controlled Substances: Placement of UR-144, XLR11, and AKB48 into Schedule I," proposing to control UR-144, XLR11, and AKB48 in schedule I of the CSA. 80 FR 27611, May 14, 2015. The proposed rule provided an opportunity for interested persons to file a request for hearing in accordance with the DEA regulations on or before June 15, 2015. No requests for such a hearing were received by the DEA. The NPRM also provided an opportunity for interested persons to submit written comments on the proposal on or before June 15, 2015.

Comments Received

The DEA received three comments on the proposed rule to control UR-144, XLR11, and AKB48 in schedule I of the CSA. One commenter stated that the "longwinded and unnecessarily difficult names of the chemical substances mentioned" were offensive and that they should be changed "in the name of a truly transparent government." A second commenter questioned the safety of methadone, and the third commenter opposed the control of UR-144, XLR11, and AKB48.

Two comments were received in response to the publication of the NPRM correction, for which comments were to be limited to addressing the change in the proposed placement in the CFR for the substances as hallucinogenic substances rather than cannabimimetic agents Both comments addressed whether or not these substances should be scheduled, with one commenter supporting scheduling and the other opposing. Thus, both comments were outside the scope for which comments were being accepted.

Comments Received in Response to NPRM.

Request to Shorten Chemical Names. One commenter stated that the chemical names for UR-144, XLR11, and AKB48 were unnecessarily difficult to understand and requested they be shortened.

DEA Response: In order to ensure the public is aware of the specific substances that were proposed to be controlled, and are controlled, as schedule I substances, the DEA used both the standard chemical names for UR-144, XLR11, and AKB48 and the common street level names that correspond to each substance. All names known by the DEA for UR-144, XLR11, and AKB48 were provided in the NPRM, the NPRM correction, and in this final rule. In addition, to prevent any confusion with nomenclature or other references to these substances, the DEA also used shortened names for these substances, including UR-144, XLR11, 5-fluoro-UR-144, AKB48, and APINACA. Each of the names provided in the NPRM, the NPRM correction, and this final rule are commonly accepted identifiers for the three substances.

Comment Regarding Methadone. One commenter stated that methadone is very dangerous to use, especially with the consumption of alcohol.

DEA Response: Methadone is a schedule II synthetic opioid and is not affected by this rule.

Request Not to Control UR-144, XLR11, and AKB48. One commenter opposed controlling UR-144, XLR11, and AKB48 stating "there is no reason to have this law."

DEA Response: As outlined in detail in the HHS and DEA eight-factor analyses, there is substantial evidence to support control of UR-144, XLR11, and AKB48 in schedule I of the CSA.

The use of UR-144, XLR11, and/or AKB48 has been linked to serious adverse effects including vomiting, nausea, anxiety, agitation, seizures, hallucinations, tachycardia, and stroke, which require visits to emergency facilities. In addition to the serious adverse effects, the misuse and abuse of UR-144, XLR11, and/or AKB48 has been shown to result in death. As reported by the National Forensic Laboratory Information System (NFLIS), there have been over 46,000 reports for UR-144, XLR11, and AKB48 since 2011 in at least 44 states. As determined by the HHS, there is no accepted medical use for UR-144, XLR11, and AKB48.

Scheduling Conclusion

After consideration of the relevant matter presented as a result of public comment, the scientific and medical evaluations and accompanying recommendations of the HHS, and its own eight-factor analyses, the DEA finds that these facts and all other relevant data constitute substantial evidence of potential for abuse of UR-144, XLR11, and AKB48. As such, the DEA is permanently scheduling UR-144, XLR11, and AKB48 as controlled substances under the CSA.[2]

Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analyses and recommendations of the Assistant Secretary for HHS and review of all other available data, the Administrator of the DEA, pursuant to 21 U.S.C. 811(a) and 21 U.S.C. 812(b)(1), finds that:

(1) (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR-144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) have a high potential for abuse that is comparable to other schedule I substances such as delta-9-

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[2] UR-144, XLR11, and AKB48 were initially proposed to be scheduled under § 1308.11(g). However, they do not meet the structural requirement for "cannabimimetic agents." Consistent with the analysis set forth in the DEA's 8-factor analysis, on March 22, 2016, the DEA published a corrected notice of proposed rulemaking, with opportunity for comment, proposing the placement of these substances as hallucinogenic substances under 21 CFR 1308.11(d). 81 FR 15188. The substances are being placed under § 1308.11(d), hallucinogenic substances, under this final rule.

tetrahydrocannabinol (Δ^9-THC) and JWH–018;

(2) (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR-144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) have no currently accepted medical use in treatment in the United States; and

(3) There is a lack of accepted safety for use of (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR-144, XLR11) and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) under medical supervision.

Based on these findings, the Administrator of the DEA concludes that (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144), [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR-144, XLR11), and *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48) including their salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, warrant control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

Requirements for Handling UR-144, XLR11, and AKB48

UR-144, XLR11, and AKB48 are currently scheduled on a temporary basis in schedule I[3] and therefore continue to be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, engagement in research and conduct of instructional activities or chemical analysis, and possession of schedule I controlled substances, including those listed below. These controls will continue on a permanent basis:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) UR-144, XLR11, or AKB48, or who desires to handle UR-144, XLR11, or AKB48 must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. *Disposal of Stocks.* UR-144, XLR11, and AKB 48 must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

3. *Security.* UR-144, XLR11, and AKB48 continue to be subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and 871(b), and in accordance with 21 CFR 1301.71–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of UR-144, XLR11, and AKB48 must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture UR-144, XLR11, or AKB48 in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

6. *Inventory.* Every DEA registrant required to keep records and who possesses any quantity of UR-144, XLR11, or AKB48 is required to maintain an inventory of all stocks of UR-144, XLR11, and/or AKB48 on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding UR-144, XLR11, and/or AKB48 to the Automation of Reports and Consolidated Order System (ARCOS) pursuant to 21 U.S.C. 827 and in accordance with 21 CFR 1304 and 1312.

8. *Order Forms.* Every DEA registrant who distributes UR-144, XLR11, and/or AKB48 must continue to comply with the order form requirements, pursuant to 21 U.S.C. 828 and 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of UR-144, XLR11, and AKB48 must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving UR-144, XLR11, or AKB48 not authorized by, or in violation of, the CSA or its implementing regulations continues to be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires that rules enacted in accordance with the procedures of 5 U.S.C. 553 to be effective not less than 30 days after publication of the proposed rule. 5 U.S.C. 553(d). However, the APA provides three exceptions for when an agency may make a rule effective sooner than 30 days after publication, including if the agency finds for good cause why the rule should be effective sooner and publishes those reasons with the rule. 5 U.S.C. 553(d)(3). The DEA finds that there is good cause for this scheduling action to be immediately effective upon publication. A delay in the effective date is unnecessary and contrary to the public interest. It is unnecessary because UR-144, XLR11, and AKB48 are already controlled under 21 U.S.C. 811(h). Additionally, a delay in the effective date could potentially temporarily eliminate these substances from being controlled, thereby resulting in an imminent hazard to the public safety. As noted above, the use of UR-144, XLR11, and/or AKB48 has been linked to serious adverse effects including vomiting, nausea, anxiety, agitation, seizures, hallucinations, tachycardia, and stroke, which require visits to emergency facilities. In addition to the serious adverse effects, the misuse and abuse of UR-144, XLR11, and/or AKB48 has been shown to result in death.

Executive Orders 12866 and 13563, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review

In accordance with 21 U.S.C. 811(a), this scheduling action is subject to formal rulemaking procedures done "on the record after opportunity for a hearing," which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

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[3] UR-144, XLR11, and AKB48 are currently subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h). 80 FR 27854, May 15, 2016.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602, has reviewed this final rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. On May 16, 2013, the DEA published a final order amending 21 CFR 1308.11(h) to temporarily place these three synthetic cannabinoids into schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 78 FR 28735. On May 15, 2015, the DEA published a final order extending the temporary placement of these substances in schedule I of the CSA for up to one year pursuant to 21 U.S.C. 811(h)(2). 80 FR 27854. Accordingly, all entities that currently handle or plan to handle these synthetic cannabinoids are estimated to have already established and implemented the systems and processes required to handle UR-144, XLR11, and AKB48. Therefore, the DEA anticipates that this rule will impose minimal or no economic impact on businesses that currently handle UR-144, XLR11, or AKB48 for lawful purposes. This estimate applies to entities large and small. Accordingly, the DEA has concluded that this rule will not have a significant effect on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

On the basis of information contained in the "Regulatory Flexibility Act" section above, the DEA has determined and certifies pursuant to the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, that this action will not result in any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year. Therefore, neither a Small Government Agency Plan nor any other action is required under provisions of the UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: "an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets." However, pursuant to the CRA, the DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.11:

■ a. Add paragraphs (d) (48) through (50); and

■ b. Remove paragraphs (h)(1) through (3) and redesignate paragraphs (h)(4) through (25) as paragraphs (h)(1) through (22), respectively.

The additions read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(48) (1-pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (UR-144)	(7144)
(49) [1-(5-fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (5-fluoro-UR-144, XLR11)	(7011)
(50) *N*-(1-adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (APINACA, AKB48)	(7048)

* * * * *

Dated: May 6, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–11204 Filed 5–10–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0137]

Safety Zone; Fourth of July Fireworks, City of Eureka, Humboldt Bay, Eureka, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Fourth of July Fireworks, City of Eureka in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

DATES: The regulations in 33 CFR 165.1191, Table 1, Item number 3, will be enforced from 10 a.m. on July 3, 2016 through 10:40 p.m. on July 4, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Lieutenant Junior Grade Christina Ramirez, Sector San Francisco Waterways Safety Division, U.S. Coast

Guard; telephone 415–399–3585, email *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a safety zone in navigable waters around and under the fireworks barge within a radius of 100 feet during the loading, transit, and arrival of the fireworks barge to the display location and until the start of the fireworks display.

From 10 a.m. until 6 p.m. on July 3, 2016 the fireworks barge will be loaded off of Schneider Dock in Eureka, CA in approximate position 40°47′50″ N, 124°11′11″ W (NAD 83). The fireworks barge will remain at the Schneider Dock until the start of the transit. From 2:30 p.m. to 3:30 p.m. on July 4, 2016 the loaded barge will transit from Schneider Dock to the launch site off of Woodley Island near Eureka, CA at approximate position 40°48′29″ N, 124°10′06″ W (NAD 83) where it will remain until the commencement of the fireworks display. Upon the commencement of the 25 minute fireworks display, scheduled to begin at 10 p.m. on July 4, 2016, the safety zone will increase in size to encompass the navigable waters around and under the fireworks barge within a radius 1,000 feet at approximate position 40°48′29″ N, 124°10′06″ W (NAD 83) for the Fourth of July Fireworks, City of Eureka in 33 CFR 165.1191, Table 1, Item number 3.

This safety zone will be in effect from 10 a.m. on July 3, 2016 until 10:40 p.m. on July 4, 2016.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This rule is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: April 15, 2016.

Gregory G. Stump,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2016–11130 Filed 5–10–16; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 601

Purchasing of Property and Services

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising its purchasing regulations governing contract claims and disputes to modify and clarify the language concerning the right of appeal which must be included in the contracting officer's final decision with regard to a contract claim or dispute.

DATES: *Effective:* May 11, 2016.

ADDRESSES: Written inquiries may be addressed to Supply Management Infrastructure, USPS, Room 1141, 475 L'Enfant Plaza SW., Washington, DC 20260.

FOR FURTHER INFORMATION CONTACT: Shelita V. Taylor, 202–268–4327.

SUPPLEMENTARY INFORMATION: This document revises paragraph (g)(7) of 39 CFR 601.109, *Contract claims and disputes.* As revised, § 601.109(g)(7) will ensure that the contracting officer's final decision regarding a contract claim or dispute contains language that fully and accurately advises the contractor of the right and process to appeal that final decision to the Postal Service Board of Contract Appeals. As revised, this paragraph mandates that a supplier or other contractor must file a notice of appeal within ninety days from the date the contracting officer's final decision letter is received. This document also corrects the address of the USPS Judicial Officer Department's Electronic Filing System Web site.

List of Subjects in 39 CFR Part 601

Government procurement.

Accordingly, for the reasons stated, 39 CFR part 601 is amended as follows:

PART 601—PURCHASING OF PROPERTY AND SERVICES

■ 1. The authority citation for 39 CFR part 601 continues to read as follows:

Authority: 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

■ 2. In § 601.109, revise paragraph (g)(7) to read as follows:

§ 601.109 Contract claims and disputes.

* * * * *

(g) * * *

(7) *Wording of decisions.* The contracting officer's final decision must contain the following paragraph: "This is the final decision of the contracting officer pursuant to the Contract Disputes Act of 1978 and the clause of your contract entitled *Claims and Disputes.* You may appeal this decision to the Postal Service Board of Contract Appeals by filing a notice of appeal within ninety days from the date you receive this decision. You may file the notice of appeal online through the USPS Judicial Officer Department's Electronic Filing System Web site located at *https://uspsjoe.justware.com/JusticeWeb,* or by mailing or otherwise furnishing the notice of appeal to the Postal Service Board of Contract Appeals. You also may appeal by mailing, or otherwise furnishing written notice of appeal to the contracting officer within ninety days from the date you receive this decision. The notice should identify the contract by number, reference this decision, and indicate that an appeal is intended. Alternatively, you may bring an action directly in the United States Court of Federal Claims within twelve months from the date you receive this decision."

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Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–11043 Filed 5–10–16; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 155 and 156

[CMS–9933–IFC]

RIN 0938–AS87

Patient Protection and Affordable Care Act; Amendments to Special Enrollment Periods and the Consumer Operated and Oriented Plan Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment establishes provisions that alter the parameters of select special enrollment periods and that revise certain rules governing consumer operated and oriented plans (CO–OPs).

DATES: *Effective date:* These regulations are effective on May 11, 2016, with the exception of the amendments to 45 CFR 155.420, which are effective on July 11, 2016.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 5, 2016.

ADDRESSES: In commenting, please refer to file code CMS–9933–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed)

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9933–IFC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9933–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jeff Wu, (301) 492–4305, or Lindsey Murtagh, (301) 492–4106, for general information. Rachel Arguello, (301) 492–4263, for matters related to special enrollment periods. Kevin Kendrick, (301) 492–4134, for matters related to CO–OPs.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Executive Summary

The Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), as amended (the Affordable Care Act) enacted a set of reforms that make quality health insurance coverage and care more affordable and accessible to millions of Americans. These reforms include the creation of competitive marketplaces called Affordable Insurance Exchanges, or "Exchanges" (in this final rule, we also call an Exchange a Health Insurance Marketplace^{SM}, or Marketplace^{SM} [1]) through which qualified individuals and qualified employers can purchase health insurance coverage during open enrollment periods or special enrollment periods, if eligible. These Affordable Care Act reforms also include the establishment of a loan program to foster the creation of Consumer Operated and Oriented Plans (CO–OPs) to offer qualified health plans (QHPs) to individuals and small employers. In previous rulemaking, we have outlined the major provisions and parameters related to these programs.

Section 1311(c)(6) of the Affordable Care Act establishes enrollment periods, including special enrollment periods for qualified individuals, for enrollment into QHPs through an Exchange. This interim final rule with comment amends the eligibility requirements of the special enrollment period for individuals who gain access to new QHPs as a result of a permanent move so that this special enrollment period is generally available only to those individuals who had minimum essential coverage prior to their permanent move. This change aligns the eligibility requirements with the intent of this special enrollment period (that is, to afford individuals the full range of plan options when they relocate), and promotes stability in the health insurance market. This interim final rule with comment does not alter the eligibility for special enrollment periods for (1) those being released from incarceration; (2) those moving to the United States from abroad; or (3) those who previously were in a non-Medicaid expansion State and ineligible for advance payments of the premium tax credit because of a household income below 100 percent of the Federal poverty level, and ineligible for Medicaid during the same timeframe, who make a permanent move to a State where they are newly eligible for advance payments of the premium tax credit.

We are also eliminating the January 1, 2017 implementation deadline for an Exchange to offer advanced availability of the special enrollment period for certain individuals who gain access to new QHPs as a result of a permanent move; and for offering a new special enrollment period for loss of a dependent or for no longer being considered a dependent due to divorce, legal separation, or death. This leaves the implementation of both provisions at the option of the Exchange. We do not believe it is appropriate to require Exchanges to expand eligibility for an existing special enrollment period or offer a new special enrollment period when both could introduce additional uncertainty to the Exchange risk pool at this time.

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[1] Health Insurance Marketplace^{SM} and Marketplace^{SM} are service marks of the U.S. Department of Health & Human Services.

Section 1322 of the Affordable Care Act establishes the CO–OP program, which is a loan program that funds the establishment of private, non-profit, consumer-operated, consumer-oriented health plan issuers of QHPs. As with many new businesses entering complex, competitive markets, a number of the CO–OPs have encountered challenging market conditions in their early years. Although the Affordable Care Act appropriated $6 billion for the CO–OP program, $4.9 billion was subsequently rescinded, and there are no remaining funds available to award to these entities. In the absence of additional Federal loans to CO–OPs, many of these entities would benefit from the infusion of private capital to assist them in achieving long-term stability and competitive success in the market.

In this interim final rule with comment, we amend certain CO–OP governance requirements to provide greater flexibility and facilitate private market transactions that can provide access to needed capital. These amendments will permit a CO–OP to recruit potential directors from a broader pool of qualified candidates. We also provide greater clarity with respect to what constitutes non-compliance with rules governing a CO–OP's business and the transactions into which it may enter. These changes will provide CO–OPs with flexibility common among private market health insurance issuers, and will support the financial viability of CO–OPs, while at the same time maintaining the fundamental member-governed, member-focused nature of the CO–OP program, and enabling CO–OPs to continue to benefit their enrollees.

II. Background

A. Legislative and Regulatory Overview

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this final rule, we refer to the two statutes collectively as the Affordable Care Act.

Subtitles A and C of title I of the Affordable Care Act reorganized, amended, and added to the provisions of part A of title XXVII of the Public Health Service Act (PHS Act) relating to group health plans and health insurance issuers in the group and individual markets.

Section 1311(c)(6)(C) of the Affordable Care Act directs the Secretary of HHS to require an Exchange to provide for special enrollment periods specified in section 9801 of the Internal Revenue Code of 1986 and other special enrollment periods under circumstances similar to such periods under part D of title XVIII of the Social Security Act.

Section 1322 of the Affordable Care Act directs the Secretary to establish the CO–OP program to foster the creation of consumer-governed, private non-profit health insurance issuers to offer QHPs in the individual and small group markets in the States in which they are licensed. The CO–OP program, in addition to improving consumer choice and plan accountability, also seeks to promote integrated models of care and enhance competition in the Exchanges. Section 1322 establishes eligibility standards for the CO–OP program and terms for loans, and provides basic standards that organizations must meet to participate in this program and become a CO–OP, including market participation and governance requirements.

1. Special Enrollment Periods

In the July 15, 2011 **Federal Register** (76 FR 41865), we published a proposed rule establishing special enrollment periods for the individual Health Insurance Exchange. We implemented these special enrollment periods in a final rule published in the March 27, 2012 **Federal Register** (77 FR 18309) (Exchange Establishment Rule). In the January 22, 2013 **Federal Register** (78 FR 4594), we published a proposed rule amending certain special enrollment periods, including the special enrollment periods described in 45 CFR 155.420(d)(3) and (7). We finalized these rules in the July 15, 2013 **Federal Register** (78 FR 42321).

In the June 19, 2013 **Federal Register** (78 FR 37032), we proposed to add a special enrollment period at 45 CFR 155.420(d)(10). We finalized this proposal in the Oct. 30, 2013 **Federal Register** (78 FR 65095). In the May 27, 2014 **Federal Register** (79 FR 30348), we published a proposed rule amending § 155.420(b), (c), (d)(4), (d)(5), (d)(9), (d)(10), and (e). We finalized these provisions in the May 27, 2014 **Federal Register** (79 FR 30348). In the October 1, 2014 **Federal Register** (79 FR 59138), we published a correcting amendment related to § 155.420(b).

In the November 26, 2014 **Federal Register** (79 FR 70673), we proposed to amend § 155.420(b), (c), (d)(1), (d)(2), (d)(4), and (d)(6). We finalized these provisions in the February 27, 2015 **Federal Register** (80 FR 10866). In the July 7, 2015 **Federal Register** (80 FR 38653), we issued a correcting amendment to § 155.420(b)(d)(2). In the December 2, 2015 **Federal Register** (80 FR 75487) (proposed 2017 Payment Notice), we sought comment and data related to existing special enrollment periods, including data relating to the potential abuse of special enrollment periods. In the March 8, 2016 **Federal Register** (81 FR 12203) (2017 Payment Notice), we stated that in order to review the integrity of special enrollment periods, the Federally-facilitated Exchange (FFE) will conduct an assessment by collecting and reviewing documents from consumers to confirm their eligibility for the special enrollment periods under which they enrolled.

2. CO–OP Program

In the July 20, 2011 **Federal Register** (76 FR 43237), we published a proposed rule governing the CO–OP program (proposed CO–OP Rule). On December 13, 2011, we published the final CO–OP Rule (76 FR 77392).

In the March 27, 2012 **Federal Register**, we published a final rule implementing components of the Exchanges and setting forth standards for eligibility for Exchanges (77 FR 18474) (Exchange Establishment Rule). This rule amended the regulations regarding the CO–OP program.

B. Stakeholder Consultation and Input

HHS consulted stakeholders on the policies related to implementation of the Affordable Care Act, including special enrollment periods and CO–OPs. We have held a number of listening sessions with consumers, providers, employers, health plans, the actuarial community, and State representatives, to gather public input. We consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners, regular contact with States, and meetings with health insurance issuers, organizations participating in the CO–OP program, trade groups, consumer advocates, employers, and other interested parties. We have held a number of recent meetings with issuers (including CO–OPs), regulators, and consumer groups relating to the effects of special enrollment periods on the risk pool, and on CO–OPs' attempts to raise private capital. We considered all public input we received as we developed the policies in this interim final rule with comment.

III. Provisions of the Interim Final Rule

A. Special Enrollment Periods (§ 155.420)

Special enrollment periods provide a critical pathway to coverage for qualified individuals who experience qualifying events and need to enroll in or change plans outside of the annual open enrollment period or during open enrollment with a coverage effective date earlier than generally provided during the open enrollment period. One such special enrollment period described in 45 CFR 155.420(d)(7) may be granted to a qualified individual or enrollee, or his or her dependent, who gains access to new QHPs as a result of a permanent move.

As discussed in the Exchange Establishment Rule (77 FR 18310, 18392), the special enrollment period in § 155.420(d)(7) was intended to afford individuals the full range of plan options when they relocate, which maximizes consumer choice and increases competition in the health insurance market. However, this special enrollment period was never intended to provide an opportunity for enrollment in coverage where individuals make a permanent move solely for the purpose of gaining health coverage outside of the annual open enrollment period. Stakeholders have raised significant concerns that while such use of this special enrollment period may be consistent with the plain language of the rule, it is not aligned with the provision's intent. This use has the potential to destabilize the health insurance market by creating an opportunity for adverse selection where persons undertake a permanent move solely for the purpose of gaining health coverage, in which they would otherwise not be qualified to enroll. Because of concerns that unintended uses of the permanent move special enrollment period will lead to adverse selection and immediate, unexpected losses in the remaining months of this year, which could lead to significant premium increases or issuers exiting the market, we believe that action is needed as soon as possible, and delaying the rule revisions would be impracticable and contrary to the public interest.

Therefore, we are amending the eligibility parameters for this special enrollment period by adding requirements in § 155.420(d)(7)(i) and (ii). In paragraph (i), we require that individuals be enrolled in minimum essential coverage as described in 26 CFR 1.5000A–1(b) for one or more days in the 60 days preceding the date of the permanent move in order to qualify for the special enrollment period based on a permanent move.

The addition of paragraph (i) requires further amendments to the rule to maintain the availability of the permanent move special enrollment period for certain other individuals who should continue to be able to access this special enrollment period without the requirement of being previously enrolled in minimum essential coverage. Specifically, we make a necessary addition in paragraph (d)(7)(ii) to maintain eligibility for a special enrollment period for individuals previously living outside of the United States or in a United States territory who move to a location within the United States, so long as they seek to enroll in coverage within 60 days of completing their permanent move.

In light of the addition of these new requirements, we are making a further change to § 155.420(d)(7) and to (d)(3) related to incarcerated individuals. As noted in the preamble to the Exchange Establishment Rule (77 FR 18392), qualified individuals newly released from incarceration are eligible for the special enrollment period afforded to individuals under the current version of paragraph (d)(7). However, paragraph (d)(7) as amended in this interim final rule no longer enables these individuals to qualify for the special enrollment period because the health care coverage offered to incarcerated individuals in correctional facilities is generally not considered minimum essential coverage. Incarcerated individuals are also not eligible for Exchange coverage.

Therefore, we are amending paragraph § 155.420(d)(3) to include individuals who become newly eligible for a QHP due to a release from incarceration (other than incarceration pending disposition of charges), in addition to those who become newly eligible for a QHP by becoming a United States citizen or national or a lawfully present non-citizen already included in this paragraph. In so doing, we are removing the current language in paragraph (d)(3) that states that a qualified individual or his or her dependent "which was not previously a citizen, national, or lawfully present individual gains such status" and are replacing it with a cross reference to § 155.305(a)(1). This does not change the scope of the current special enrollment period and the population who may currently qualify. We are adding a cross reference to § 155.305(a)(2) for individuals who are no longer incarcerated, other than incarcerated pending disposition of charges.

In order that, at their option, Exchanges may continue to offer advanced availability of the special enrollment period for those who become newly eligible for a QHP due to a release from incarceration now included in paragraph (d)(3), we are amending paragraph § 155.420(c)(2) to include this population. Should Exchanges exercise or already have exercised this option to offer advance availability to those who become newly eligible for a QHP due to a release from incarceration, the Exchange must ensure that the coverage effective date is on the first day of the month following the release from incarceration, as was required when this population was included in the special enrollment period in paragraph (d)(7) of this section. Accordingly, we are amending § 155.420(b)(2)(iv) to include those who become newly eligible for a QHP due to a release from incarceration now included in paragraph (d)(3).

The amendment to § 155.420(d)(7) also makes the special enrollment period for a permanent move inaccessible to qualified individuals who were previously living in a non-Medicaid expansion State and, during the same timeframe, were ineligible for advance payments of the premium tax credit solely because of a household income below 100 percent of the Federal poverty level (FPL), but who become newly eligible for advance payments of the premium tax credit as a result of a permanent move to another State. By being previously ineligible for both Exchange coverage with advance payments of the premium tax credit (because of their household income) and Medicaid (solely because of the State's decision not to expand), these individuals likely would have been exempted from the requirement under section 5000A(e)(1) of the Code and its implementing regulations to maintain minimum essential coverage or eligible for an exemption from the minimum essential coverage requirement under 45 CFR 155.605(d) or (e), and therefore are unlikely to qualify for the special enrollment period for a permanent move, as amended. In order to continue to provide for a special enrollment period for these individuals, we are amending § 155.420(d)(6)(iv) to include individuals who were previously living in a non-Medicaid expansion State and, during the same timeframe, were ineligible for Medicaid, but who become newly eligible for advance payments of the premium tax credit as a result of a permanent move. This change secures the continued availability of a special enrollment period to qualified individuals who move out of a non-

Medicaid expansion State to a State where they may newly qualify for advance payments premium tax credit, but who might no longer qualify for the special enrollment period under § 155.420(d)(7), as amended in this interim final rule, because they did not previously have minimum essential coverage for one or more days in the 60 days preceding the date of the permanent move.

In addition, as discussed in the 2017 Payment Notice, we intend to conduct an assessment of QHP enrollments that were made through special enrollment periods in the FFE to ensure that consumers' eligibility for these special enrollment periods were properly determined. Until the FFE has collected and analyzed data on consumer eligibility for special enrollment periods and taken other actions to ensure that consumers are not inappropriately accessing and enrolling in coverage through existing special enrollment periods, we believe it is unnecessary and contrary to the public interest to require Exchanges to offer advanced availability of the special enrollment period in § 155.420(d)(7) or to implement the new special enrollment period in paragraph (d)(2)(ii) of this section because it could introduce additional uncertainty to the risk pool at this time.

We also considered that information technology system resources are needed to implement these provisions by January 1, 2017, and are concerned that the requirement to meet the January 1, 2017, deadline could cause needless expenditures of Exchange funds for operational changes to the extent that we propose and finalize rule amendments that delete the requirement to provide by a specific date advance availability for the special enrollment periods under (d)(7) or offer the special enrollment periods under (d)(2)(ii) based on our current program integrity efforts. In light of the competing financial and operational priorities of Exchanges, we believe it is contrary to the public interest to require that Exchanges meet the January 1, 2017, deadline. We have therefore determined that there is a need to take immediate action to delete this future deadline, rather than engaging in notice and comment rulemaking on this change, in order to avoid the unnecessary expenditure of funds by Exchanges to comply with the January 1, 2017, implementation deadline. Therefore, we are amending the following special enrollment period provisions to leave the implementation timeline for advanced availability at the discretion of the Exchange.

Section 155.420(c)(2) provides for advanced availability of the special enrollment period for a qualified individual or enrollee, or his or her dependent who gains access to new QHPs as a result of a permanent move as described in paragraph (d)(7) of this section, meaning that a qualified individual or enrollee, or his or her dependent, has 60 days before or after the triggering event (the permanent move) to select a QHP. Paragraph (c)(2) also provides that this advanced availability be available by January 1, 2017 or earlier, at the option of the Exchange. We are amending this paragraph to remove the requirement for Exchanges to offer advanced availability of the permanent move special enrollment period by January 1, 2017, which keeps this provision at the option of the Exchange.

We also amend paragraph (d)(2)(ii), which provides for a special enrollment period for an enrollee who loses a dependent or is no longer considered a dependent due to divorce, legal separation, or death, to remove the requirement that Exchanges offer this special enrollment period by January 1, 2017. We note that, if a loss of a dependent or no longer being considered a dependent due to divorce, legal separation, or death results in a loss of minimum essential coverage, such individuals may qualify for the special enrollment period for loss of minimum essential coverage. Implementation of this provision remains at the option of the Exchange.

We note that certain special enrollment periods in 45 CFR 155.420 are incorporated in the guaranteed availability regulations at § 147.104(b) and applied to issuers offering non-grandfathered individual coverage through or outside of the Exchange, and incorporated in the SHOP regulations at § 155.725(j) and § 156.285(b) and applied to QHP coverage offered through the SHOP. The changes to special enrollment periods in this interim final rule with comment therefore apply to the guaranteed availability and SHOP regulations, to the extent applicable.

B. CO-OP Program

Subpart F of part 156 of title 45 of the Code of Federal Regulations sets forth the standards applicable to the CO-OP Program. In this interim final rule with comment, we are making a number of changes to the rules governing CO-OPs to provide additional flexibility for CO-OP issuers to enter into strategic financial transactions with other entities, to improve the issuer's capital position and to further the ability of the program to facilitate the offering of competitive, high-quality health insurance on Exchanges that increases competition and consumer choice. Given the financial challenges faced by some CO-OPs recently, and the lack of opportunity for further Federal funding, we believe that these changes are needed as soon as possible. Furthermore, the CO-OPs have requested maximum flexibility in governance requirements to assist their efforts to enter into new, beneficial business relationships.

1. Definitions (§ 156.505)

In this interim final rule with comment, we are amending the definitions of "pre-existing issuer" and "representative" to permit CO-OPs increased flexibility to explore and advance business opportunities, and increase the pool of eligible candidates for their boards of directors. Both terms are used in provisions governing the standards for membership of a CO-OP board of directors. The amended definitions expand the universe of individuals eligible for membership on a CO-OP board of directors, while ensuring that appropriate standards remain in place to protect against conflicts of interest and insurance industry involvement and interference.

The definition of the term "pre-existing issuer" is amended to limit the definition to State-licensed health insurance issuers that competed in the individual and small group commercial health insurance markets on July 16, 2009, as required by section 1322(c)(2)(A) of the Affordable Care Act).

The definition of the term "representative" is revised to mean an officer, director, or trustee of an organization, or group of organizations; or a senior executive or high level representative of the Federal government, or a State or local government or a sub-unit thereof.

Section 156.515(b)(2) (which we are amending in this interim final rule with comment) provides limitations on board membership that prohibit any agent or employee of a State government or a unit of State government from serving on a CO-OP's board of directors. This standard was established to codify the requirement in section 1322(e) of the Affordable Care Act, which states that no *representative* of any Federal, State or local government (or of any political subdivision or instrumentality thereof) and no representative of a person described in section 1322(c)(2)(A) (referring to entities that were health insurance issuers on July 16, 2009) may serve on the board of directors of a qualified nonprofit health insurance issuer or with a private purchasing council established under section 1322(d), and to ensure that board members are free of conflicts of interest that could arise from their dual roles as a government representative and a CO-OP board member. For example, a State elected official may act to serve political objectives influenced by established, State-regulated competitors of the CO-OP in the insurance market, rather than acting in the best interest of the CO-OP program. Insurance company employees may pose a similar risk of conflict of interest as government employees—a representative of a competitor may be tempted not to make governance decisions based solely on the best interests of the CO-OP and its members.

The term "representative" is not statutorily defined for purposes of section 1322 of the Affordable Care Act. Based on experience in the early years of the CO-OP program, we believe the current regulatory definition is too broad, and captures individuals for whom these concerns regarding conflicts of interests are not warranted. Specifically, we do not believe it is necessary to include within the definition of representative government employees who are neither senior executives nor high- level representatives (that is, employees, agents, trustees, or other persons who possess the ability to decide organization-wide or governmental policies or goals), and individuals who are not officers, directors or trustees of an organization or groups of organizations. Although these individuals may be associated with a governmental entity or pre-existing issuer due to their employment relationship, they are unlikely to hold a position in which they would be expected or required to represent their employer's interests in their outside activities. We, therefore, believe it is a reasonable interpretation of the prohibition in section 1322(e) to exclude from the definition of representative individuals who are neither senior executives nor high-level representatives of a government unit, or an officer, director or trustee of an organization or group of organization. Furthermore, we are aware of at least one instance in which this prohibition prevented an individual from joining a CO-OP board of directors, despite the individual having significant expertise that would have been beneficial to the CO-OP and with no discernible conflict of interest arising from the individual's position as a State employee.

Current regulations also prohibit board membership by any agent or employee of an entity that held an insurance license and was subject to State insurance law on July 16, 2009 (a "pre-existing issuer" under the regulations). Under the original definition of "pre-existing issuer," this would prohibit participation from agents and employees of issuers that (1) do not compete in the markets for which CO-OPs were developed to bring competition (individual or small group health insurance markets), and (2) do not market any standard commercial health insurance available to the general public. However, employees of insurance companies that do not compete in the general commercial health insurance market also do not pose a clear or significant risk for conflicts of interest, and may have expertise that could be valuable to a CO-OP board. Therefore, exclusion of these groups of employees exceeds the purpose of the rule while unnecessarily restricting the available pool of qualified candidates for the CO-OP boards of directors. By amending the definition of "pre-existing issuer" to exclude issuers that do not compete in the individual or group health insurance markets, we narrow the exclusion so that employees of these companies may serve on CO-OP boards. We believe that the concept of a "pre-existing issuer" in the statute was intended to protect CO-OPs from conflicts of interest by barring persons associated with organizations that offer individual and group health insurance policies to the general public from participating on CO-OP boards of directors. This definition of "pre-existing issuer" is consistent with that intent. These revisions would permit representatives of licensees that market only Medicare, Medicaid, or other health insurance products that are not individual and small group insurance (for example, dental, vision, disability products) to sit on a CO-OP board.

2. CO-OP Standards (§ 156.515)

Under 45 CFR 156.515(b)(1), a CO-OP must be governed by a board of directors, with all of its directors elected by a majority vote of a quorum of the CO-OP's members that are age 18 or older, and the voting directors on the board must be members of the CO-OP. These requirements are based on the statutory requirement that the governance of a CO-OP be "subject to a majority vote of its members."

We are amending these standards to require that only a majority of directors be elected by the members and to remove the requirement that a majority of voting directors be members of the CO-OP. This revision allows entities offering loans, investments, and services to participate on the board of directors, as is common practice in the private sector, while maintaining the overall control of the board by the members of the CO-OP. We are making this change in response to program experience demonstrating that the inability to grant designated board positions to prospective partners or investors may create obstacles to potentially favorable business arrangements for CO-OPs. This amendment also provides opportunities for CO-OPs to enlist qualified individuals from outside their membership to participate in board governance. CO-OPs have experienced significant obstacles in identifying qualified and willing CO-OP members to serve on their boards of directors, in particular with regard to State requirements concerning industry experience and expertise that directors of insurance companies must possess. However, we believe that these changes will not alter the fundamental member-driven and member-governed nature of CO-OPs, since all of the CO-OP's directors will have a duty to further the CO-OP's goals, and since the membership of the CO-OP will retain control of a majority of the seats on the board of directors, thus ensuring that ultimate control will lie with directors responsible to the membership.

Section 156.515(b)(2) establishes the standards the board must meet. Section 156.515(b)(2)(i) is revised to comport with proposed changes in the types of representatives permitted to sit on the board of directors while still retaining ethical, conflict of interest, and disclosure standards. We note that any fiduciary duties that exist under State law would continue to apply. Section 156.515(b)(2)(ii) is revised to provide that each director has one vote. Section 156.515(b)(2)(iv), which provided that positions on the board designated for individuals with specialized expertise, experience, or affiliation cannot constitute a majority of the board, is removed and reserved. Our intent in doing so is to increase flexibility for CO-OPs to include on their board of directors members with suitable expertise, to improve governance and potentially facilitate strategic transactions. Section 156.515(b)(2)(v) is revised to permit representatives of State or local governments or organizations described in § 156.510(b)(1)(i) to participate on CO-OP boards of directors, provided the CO-OP does not issue policies in the State in which the government representative serves or the organization operates. This amendment is also intended to provide CO-OPs with increased flexibility regarding board membership, as well as to increase business opportunities for CO-OPs.

We also note that the requirements of § 156.515(c)(1) have at times posed an obstacle to potential strategic partners of CO-OPs. That paragraph states that at least two-thirds of the policies issued by a CO-OP must be QHPs issued in the individual and small group markets in States in which a CO-OP is licensed. This regulatory requirement is based on a statutory requirement that "substantially all" of the "activities" of CO-OPs consist of issuing QHPs in the individual and small group markets. We understand that considerable uncertainty accompanies the implementation of business plans, particularly for new entrants to complex, dynamic markets, and in relation to a standard that measures voluntary actions taken by third parties. Section 1322 of the Affordable Care Act requires CO-OP loan repayment if this substantially all standard is not met and the CO-OP fails to correct such failure within a reasonable period of time. HHS clarifies that, if a CO-OP fails to meet the standard in a given year, it would not necessarily require immediate loan repayment as long as the CO-OP is in compliance with 45 CFR 156.515(c)(2); has a specific plan and timetable to meet the two-thirds requirement, and acts with demonstrable diligence and good faith to meet the standard. A CO-OP must ultimately come back into compliance with the two-thirds standard in future years.

This clarification reflects HHS's experience in the early years of the CO-OP program, when some CO-OPs were deterred from implementing plans to enter into potentially beneficial new lines of business, such as Medicare or Medicaid products or ancillary lines such as dental or vision, out of concern that they could inadvertently, temporarily, end up with less than two-thirds of policies issued being QHPs in the individual and small group markets.

3. Loan Terms (§ 156.520)

Under § 156.520(f), a CO-OP may not convert or sell to a for-profit or non-consumer operated entity, or undertake a transaction that would result in the CO-OP implementing a governance structure that does not meet our regulatory standards. We note that the question has arisen as to whether this provision prohibits the sale or conversion of policies to a non-CO-OP issuer in connection with the wind-down of a CO-OP. If a CO-OP is out of compliance with this provision, the CO-OP will cease to be a qualified non-profit health insurance issuer, and certain rights under the CO-OP Loan Agreement will become available to CMS, including the right to accelerate repayment of the loans or terminate the Loan Agreement itself. However, in the appropriate circumstances, to preserve coverage for enrollees upon the insolvency of the issuer, notwithstanding those remedies, we recognize that a CO-OP could elect to enter into such a transaction.

We seek comment on these provisions.

C. Risk Adjustment

Based on our experience operating the 2014 benefit year risk adjustment program, HHS has become aware that certain issuers, including some new, rapidly growing, and smaller issuers, owed substantial risk adjustment charges that they did not anticipate. HHS has had a number of discussions with issuers and State regulators on ways to help ease issuers' transition to the new health insurance markets and the effects of unanticipated risk adjustment charge amounts. We believe that a robust risk adjustment program that addresses new market dynamics due to rating reforms and guaranteed issue is critical to the proper functioning of these new markets. However, we are sympathetic to these concerns and recognize that States are the primary regulators of their insurance markets. We encourage States to examine whether any local approaches, under State legal authority, are warranted to help ease this transition to new health insurance markets. Additionally, we will also continue to seek ways to improve the risk adjustment methodology. We updated the risk adjustment models in the 2017 Payment Notice, and we are exploring future improvements to the HHS risk adjustment methodology.

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*), a notice of proposed rulemaking and an opportunity for public comment are generally required before promulgation of a regulation. We also ordinarily provide a 30-day delay in the effective date of the provisions of a rule in accordance with the APA (5 U.S.C. 553(d)), which requires a 30-day delayed effective date, unless the rule is a major rule and subject to the 60-day delayed effective date required by the Congressional Review Act (5 U.S.C. 801(a)(3)) for major rules.

However, the procedure can be waived if the agency, for good cause, finds that notice and public comment and delay in effective date are impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. 5 U.S.C. 553(d)(3); 5 U.S.C. 808(2).

HHS has determined that issuing this regulation in proposed form, such that it would not become effective until after public comments are submitted, considered and responded to in a final rule, would be impracticable and contrary to the public interest.

Regarding the amendments to special enrollment periods, HHS has determined that taking immediate action to amend the parameters of the special enrollment period for qualified individuals, enrollees, or their dependents who gain access to new QHPs as a result of a permanent move, so that it is aligned with the provision's intent, is imperative to guarding against adverse selection and gaming of the permanent move special enrollment period. Immediate action is also necessary to assuring issuer confidence in the appropriate pricing to account for the Exchange risk pool. This issuer confidence is necessary to maintain robust issuer participation in and competition on the Exchanges and to encourage affordability of coverage for enrollees and the continuity of care that is supported by the continued availability of plans on the Exchanges that were available in the previous year. Therefore, HHS has determined that delaying the effective date of the special enrollment period regulatory changes to allow for proposed rulemaking and comment is contrary to the public interest because consumers would be negatively impacted absent robust participation by issuers and by the risk of insurance rate increases that can result from unchecked adverse selection.

In addition, HHS has determined it needs to take immediate action to remove the January 1, 2017 implementation deadline for (1) offering advance availability of the special enrollment period for qualified individuals who gain access to new QHPs as a result of a permanent move and (2) for offering the special enrollment period for losing a dependent or no longer being considered a dependent due to divorce, legal separation, or death. Postponing this change to allow for proposed rulemaking and comment could result in unnecessary expenditures of dollars by Exchanges on information technology system builds to comply with deadlines that may not be implemented if HHS's current study of special enrollment periods leads to removal of the January 2017 implementation date. If a State is permitted under a no cost extension of its 1311 grant funding to use those funds for establishment activities, including those related to special enrollment periods, it is possible this could also result in the unnecessary expenditure of Federal grant funds. Therefore, delaying action to remove this implementation deadline is contrary to the public interest because it could lead to the unnecessary expenditure of State and possibly Federal funds.

We also believe that it would be impracticable and contrary to the public interest to delay the implementation of the amendments to the CO-OP program regulations. A large fraction of the CO-OPs have ceased operations due to financial conditions and other issues in the past year. The amendments in this rule are intended to enhance the ability of CO-OPs to attract investors or develop new relationships or products that we anticipate will support their short- and long-term financial viability. We believe having the flexibility provided by these amendments may help some CO-OPs engage in new opportunities, and have determined that it would not be in the public interest to delay implementation of this rule. Specifically, we believe it is essential that these regulation changes be effective by the summer of 2016 when, due to the prevailing business cycle, CO-OPs, regulators, and HHS must determine whether a CO-OP will be in a position to enter open enrollment for plan year 2017, and develop and operationalize forms and rates accordingly.

HHS has determined the continued viability of CO-OPs and their participation in open enrollment for plan year 2017 is important to encouraging competition in the individual and small group markets. Because no additional Federal loan funds can be awarded, and all awarded funds have been disbursed for most CO-OPs, a large number of CO-OPs are seeking to stabilize their balance sheets this summer. In order for CO-OPs to benefit from the governance changes described in this interim final rule with comment, those changes must be implemented immediately. Therefore, HHS has determined that delaying the effective date of the regulatory changes to allow for proposed rulemaking, comment or a delayed effective date would be detrimental to the public interest, as markets with healthy competition are essential to consumer choice of affordable coverage options. In addition, by permitting a broader group of people to serve as board members, the rule relieves a restriction on how CO-OPs may operate, which also justifies waiver of the delay in effective date.

We find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. In addition, with respect to the provisions regarding CO-OPs, we find good cause to waive the 30-day delay in the effective date for this interim final rule with comment. Finally, with respect to the provisions regarding CO-OPs, we also find alternate justification for waiving the 30-day delay in effective date. These provisions will be effective on May 11, 2016. The amendments regarding special enrollment periods will be effective on July 11, 2016. The delay in the effective date for these amendments will provide Exchanges with time to operationalize these amendments. We are providing a 60-day public comment period.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VI. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

We do not anticipate that the amendments to the parameters of the special enrollment period for a permanent move in 45 CFR 155.420(d)(7), combined with the amendments to the special enrollment periods in paragraphs (d)(3) and (d)(6)(iv), will reduce the availability of a special enrollment period to those individuals who should qualify under the provision's original intent, and we believe that the effect of the amendments will result in closer alignment with earlier regulatory impact estimates. We seek comment and data on the impact of these amendments on the actual use of special enrollment period by individuals who would previously have qualified for the permanent move special enrollment period.

Although most of the original $6 billion appropriated for the CO-OP program has been rescinded (as mentioned above), the program has issued significant sums to its borrowers. The total loan awards for currently operating CO-OPs is as follows:

CO-OP Name	State	Current obligations
HealthyCT, Inc.	CT	$127,980,768
Land of Lincoln Mutual Health Insurance Company	IL	160,154,812
Minuteman Health, Inc.	MA, NH	156,442,995
Evergreen Health Cooperative, Inc.	MD	65,450,900
Maine Community Health Options	ME	132,316,124
Montana Health Cooperative	MT, ID	85,019,688
Freelancers Consumer Operated and Oriented Program of New Jersey, Inc.	NJ	109,074,550

CO-OP Name	State	Current obligations
New Mexico Health Connections	NM	77,317,782
Coordinated Health Mutual, Inc.	OH	129,225,604
Community Care of Oregon, Inc.	OR	56,656,900
Common Ground Healthcare Cooperative	WI	107,739,354
Total	11	1,207,379,477

With respect to the changes to the CO-OP program that we are implementing, we do not have any data available to estimate the likely number or magnitude of capital-raising transactions that may result from our changes. Directionally, we expect the changes to facilitate the raising of additional capital for some number of CO-OPs, and that the additional capital cushion will strengthen the financial base and allow those CO-OPs to better weather financial stress including both the types of market-wide and CO-OP specific issues that led to wind-downs in 2015. We seek comments and any supporting data that may shed light on that potential impact.

We have concluded that this rule does not reach the economic threshold of $100 million or more in any one year, and therefore is not considered a major rule with economically significant effects.

The Regulatory Flexibility Act, (5 U.S.C. 601, *et seq.*), requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of this interim final rule with comment on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the Regulatory Flexibility Act because we have determined, and the Secretary certifies, that this interim final rule with comment would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the Regulatory Flexibility Act. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this interim final rule with comment would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits and take certain other actions before issuing any rule that includes any Federal mandate that may result in expenditures in any 1 year by State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2016, that threshold is approximately $146 million. This interim final rule with comment does not establish Federal mandates that would result in expenditures in any 1 year of more than $146 million by State, local, or Tribal government, in the aggregate, or by the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates an interim final rule with comment that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule with comment does not impose substantial direct costs on State and local governments or preempt State law. However, we believe the rule has Federalism implications. In the amendments regarding the CO-OP program, we have amended a prohibition on participation on CO-OP board of directors that previously prevented any State employee from participating to allow certain State employees who are unlikely to have a potential conflict of interest to participate. In removing the January 1, 2017 implementation deadline for (1) offering advance availability of the special enrollment period for qualified individuals who gain access to new QHPs as a result of a permanent move and (2) for offering the special enrollment period for losing a dependent or no longer being considered a dependent due to divorce, legal separation, or death, we leave implementation at the option of Exchanges, including State Exchanges.

This interim final rule with comment is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to Congress and the Comptroller General for review.

List of Subjects

45 CFR Part 155

Administrative practice and procedure, Advertising, Brokers, Conflict of interest, Consumer protection, Grant administration, Grant programs—health, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, Technical assistance, Women and youth.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory Committees, Brokers, Conflict of interests, Consumer protection, Grant programs—health, Grants administration, Health care, Health insurance, Health maintenance organizations (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs—health, Medicaid, Organization and functions (Government agencies), Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR parts 155 and 156 as set forth below:

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 1. The authority citation for part 155 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1332, 1334, 1402, 1411, 1412, 1413, Public Law 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083).

■ 2. Section 155.420 is amended by revising paragraphs (b)(2)(iv), (c)(2), (d)(2)(ii), (d)(3), (d)(6)(iv), and (d)(7) to read as follows:

§ 155.420 Special enrollment periods.

* * * * *

(b) * * *

(2) * * *

(iv) If a consumer loses coverage as described in paragraph (d)(1) or (d)(6)(iii) of this section, gains access to a new QHP as described in paragraph (d)(7) of this section, becomes newly eligible for enrollment in a QHP through the Exchange in accordance with § 155.305(a)(2) as described in paragraph (d)(3) of this section, or becomes newly eligible for advance payments of the premium tax credit in conjunction with a permanent move as described in paragraph (d)(6)(iv) of this section, if the plan selection is made on or before the day of the triggering event, the Exchange must ensure that the coverage effective date is on the first day of the month following the date of the triggering event. If the plan selection is made after the date of the triggering event, the Exchange must ensure that coverage is effective in accordance with paragraph (b)(1) of this section or on the first day of the following month, at the option of the Exchange.

* * * * *

(c) * * *

(2) *Advanced availability.* A qualified individual or his or her dependent who is described in paragraph (d)(1) or (d)(6)(iii) of this section has 60 days before or after the triggering event to select a QHP. At the option of the Exchange, a qualified individual or his or her dependent who is described in paragraph (d)(7) of this section; who is described in paragraph (d)(6)(iv) of this section and becomes newly eligible for advance payments of the premium tax credit as a result of a permanent move to a new State; or who is described in paragraph (d)(3) of this section and becomes newly eligible for enrollment in a QHP through the Exchange because he or she newly satisfies the requirements under § 155.305(a)(2), has 60 days before or after the triggering event to select a QHP.

* * * * *

(d) * * *

(2) * * *

(ii) At the option of the Exchange, the enrollee loses a dependent or is no longer considered a dependent through divorce or legal separation as defined by State law in the State in which the divorce or legal separation occurs, or if the enrollee, or his or her dependent, dies.

(3) The qualified individual, or his or her dependent, becomes newly eligible for enrollment in a QHP through the Exchange because he or she newly satisfies the requirements under § 155.305(a)(1) or (2);

* * * * *

(6) * * *

(iv) A qualified individual who was previously ineligible for advance payments of the premium tax credit solely because of a household income below 100 percent of the FPL and who, during the same timeframe, was ineligible for Medicaid because he or she was living in a non-Medicaid expansion State, who either experiences a change in household income or moves to a different State resulting in the qualified individual becoming newly eligible for advance payments of the premium tax credit;

(7) The qualified individual or enrollee, or his or her dependent, gains access to new QHPs as a result of a permanent move and either—

(i) Had minimum essential coverage as described in 26 CFR 1.5000A–1(b) for one or more days during the 60 days preceding the date of the permanent move, or

(ii) Was living outside of the United States or in a United States territory at the time of the permanent move;

* * * * *

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 3. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1312, 1321–1322, 1324, 1334, 1342–1343, 1401–1402, and 1412, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18032, 18041–18042, 18044, 18054, 18061, 18063, 18071, 18082, 26 U.S.C. 36B, and 31 U.S.C. 9701).

■ 4. Section 156.505 is amended by revising the definitions of "pre-existing issuer" and "representative" to read as follows:

§ 156.505 Definitions.

* * * * *

Pre-existing issuer means a health insurance issuer licensed by a State regulator that marketed individual or group health insurance benefit plans (other than Medicare or Medicaid Managed Care plans) on July 16, 2009.

* * * * *

Representative means an officer, director, or trustee of an organization, or group of organizations; or a senior executive or high-level representative of the Federal government, or a State or local government or a sub-unit thereof.

* * * * *

■ 5. Section 156.515 is amended by:

■ a. Revising paragraphs (b)(1)(i) through (v), (b)(2)(i), (ii), (iii), and (v);

■ b. Removing paragraph (b)(1)(vi); and

■ c. Removing and reserving paragraph (b)(2)(iv).

The revisions read as follows:

§ 156.515 CO–OP standards.

* * * * *

(b) * * *

(1) * * *

(i) The CO–OP must be governed by an operational board with a majority of directors elected by a majority vote of a quorum of the CO–OP's members that are age 18 or older;

(ii) All members age 18 or older must be eligible to vote for each of the directors on the organization's operational board subject to a vote of the members under paragraph (b)(1)(i) of this section;

(iii) Each member age 18 or older must have one vote in each election for each director subject to a vote of the members under paragraph (b)(1)(i) of this section in that election;

(iv) The first elected directors of the organization's operational board must be elected no later than one year after the effective date on which the organization provides coverage to its first member; the entire operational board must be elected or in place, and in full compliance with paragraph (b)(1)(i) of this section, no later than two years after the same date;

(v) Elections of the directors on the organization's operational board subject to a vote of the members under paragraph (b)(1)(i) of this section must be contested so that the total number of candidates for contested seats on the operational board exceeds the number of contested seats for such directors, except in cases where a seat is vacated mid-term due to death, resignation, or removal.

(2) * * *

(i) Each director must meet ethical, conflict-of-interest, and disclosure standards;

(ii) Each director has one vote;

(iii) Positions on the board of directors may be designated for individuals with specialized expertise, experience, or affiliation (for example, providers, employers, and unions); and

(iv) [Reserved]

(v) *Limitation on government and issuer participation.* No representative of any Federal, State or local government (or of any political subdivision or instrumentality thereof) and no representative of any organization described in § 156.510(b)(1)(i) (in the case of a representative of a State or local government or organization described in § 156.510(b)(1)(i), with respect to a State in which the CO–OP issues policies), may serve on the CO–OP's formation board or as a director on the organization's operational board.

* * * * *

Dated: *May 5, 2016.*

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: May 5, 2016

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2016–11017 Filed 5–6–16; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 1330

RIN 0985–AA12

National Institute on Disability, Independent Living, and Rehabilitation Research

AGENCY: National Institute on Disability, Independent Living, and Rehabilitation Research; Administration for Community Living; HHS.

ACTION: Final rule.

SUMMARY: This rule implements the Workforce Innovation and Opportunity Act of 2014 and reflects the transfer of the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) from the Department of Education to the Department of Health and Human Services (HHS). The previous regulations were issued by the Department of Education. The rulemaking consolidates the NIDILRR regulations into a single part, aligns the regulations with the current statute and HHS policies, and provides guidance to NIDILRR grantees.

DATES: These final regulations are effective July 1, 2016.

FOR FURTHER INFORMATION CONTACT: Greg Pugh, Administration for Community Living, telephone (202) 795–7422 (Voice). This is not a toll-free number. This document will be made available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

I. Discussion of Final Rule

The Workforce Innovation and Opportunity Act of 2014 ("WIOA," Pub. L. 113–128), signed into law on July 22, 2014, included significant changes to Title II of the Rehabilitation Act of 1973. The first of these is the insertion of a new name, the National Institute on Disability, Independent Living, and Rehabilitation Research ("NIDILRR," which was previously the National Institute on Disability and Rehabilitation Research). WIOA also relocates NIDILRR from the Department of Education to the Administration for Community Living ("ACL") of the Department of Health and Human Services. As part of the transfer, the Administrator of ACL (Administrator) drafted a Notice of Proposed Rulemaking that was published on December 21, 2015, to implement the Workforce Innovation and Opportunity Act of 2014 and reflect the transfer of the National Institute on Disability, Independent Living, and Rehabilitation Research from the Department of Education to the Department of Health and Human Services.

ACL received 13 unduplicated comments during the public comment period from individuals, state agencies, and organizations representing disability, rehabilitation, and aging constituencies. ACL has read and considered each of the comments received. We respond here to the most-commonly-received comments and those that we believe require further discussion. Several comments raised issues that are specific to the commenter. Responding to such comments is beyond the scope of the final regulation. Nevertheless, we encourage commenters with individualized questions to contact NIDILRR directly at 202–401–4634—Option 5.

Many of the comments expressed broad general support for the rule and the broader transfer of NIDILRR to the Administration for Community Living. Commenters expressed their support of the consolidation of existing NIDILRR regulations and alignment with HHS policies, a major goal of this rulemaking. Others expressed their approval of the elimination of unnecessary language from the regulatory text, while at the same time maintaining existing Department of Education language where it makes programmatic sense to do so. Finally, multiple commenters wrote in support of the inclusion of the stages of research, as well as the new stages of development.

While no commenters expressed general opposition to the promulgation of the rule, several expressed their concerns about specific provisions of the proposed rule. We made changes to the regulatory text based on the comments as discussed below and we fixed a few non-substantive technical errors in the regulatory text. In addition, it has come to our attention that a selection criterion used at the Department of Education related to the quality of a proposed project's design was inadvertently omitted from this rule. This criterion is extremely valuable to the evaluation of applications for certain NIDILRR projects, and we have therefore included it verbatim at § 1330.24(p) as one of the criteria the Director may consider in evaluating an application. Other than the changes discussed below, we adopt our discussion of the rule in the Notice of Proposed Rulemaking published December 21, 2015 (80 FR 79283).

A. Funding Out of Rank Order in Field-Initiated Competitions

Comment: Six commenters (five organizations and one individual) raised concerns about a proposed change to § 1330.25. The proposed regulation gives the NIDILRR director authority to fund out of rank order in field-initiated competitions when there is an opportunity to fund a project of significant interest to the agency. Concerns ranged from the change giving too much authority to political appointees to the potential undermining of the scientific integrity of the research process. Suggestions ranged from dropping this proposed change in the regulation to increasing the scoring threshold for use of the provision or to creating a requirement for a formal explanation by the NIDILRR director justifying the proposed change.

Response: NIDILRR appreciates the concerns expressed by these commenters especially the focus on impartial peer review and its role in maintaining the scientific integrity of NIDILRR's research portfolio. Our goal in suggesting this change was to provide an opportunity for the Director to select applications that address critical agency goals in circumstances where these applications have high scores but would not be funded in a strictly rank order framework. NIDILRR has long had the ability to fund out of rank order, and though it was rarely used, we added the 80 percent threshold in an effort to ensure the quality of NIDILRR-funded research. NIDILRR has expanded our field-initiated research opportunities in recent years, and we think that clarifying the requirements for funding out of rank order will ensure this quality, while also allowing for funding of compelling research opportunities. In such cases where an application may have otherwise gone unfunded in a strict rank-order process, we believe that the Director should have the ability to fund highly promising studies, while setting a minimum threshold for quality assurance and providing for public notification.

After careful consideration of the concerns raised by the commenters, as well as a review of past applications, NIDILRR proposes to increase the threshold before funding out of rank order can be considered to a score of 85 points or above. We believe, based upon decades of staff experience with the grant review process, that this number strikes a reasonable balance between providing the Director the flexibility to fund applications which are uniquely promising and ensuring that all NIDILRR-funded research projects are of the quality and rigor for which NIDILRR is known. In addition, the regulation has been amended to require a public notification by the Director of any decision to fund out of rank order. Should it become advisable to raise this threshold further, we may revisit this threshold in the future. We take these steps to clarify our commitment to conducting rigorous peer review.

B. Publication of Funding Opportunities and Application Instructions

Comment: In light of the new regulation's elimination of specific funding application instructions, two commenters suggested that NIDILRR update its Web site to provide clear information to applicants on funding opportunities and on the process of submitting applications.

Response: NIDILRR shares these commenters' commitment to ensuring that potential grantees have adequate access to information on NIDILRR's research priorities and application processes. To this end, we are publishing funding forecast documents with links to necessary application information on the ACL Web site, and will endeavor at all times to maximize the transparency and wide dissemination of funding opportunities and application instructions.

C. Stages of Development

Comment: One commenter, while supporting the stages of development in § 1330.5, expressed concern that the rule doesn't make clear that the technology transfer plan requirement does not sufficiently convey the complexity of supply and demand and the behaviors of consumers and other stakeholders in their decisions to adopt and use technology.

Response: The stages of development provide an organizational framework to guide prospective applicants in preparing their technical proposals. The stages are not prescriptive. For this reason, we believe that identifying the relevant stage(s) of development will allow the peer review process to better determine the extent to which proposed activities to facilitate and measure product adoption are necessary and appropriate and to determine the extent to which applicants understand contextual factors that might impact product adoption.

D. Disability Advisory Panels and Reviewer Training

Comment: One organization made a number of suggestions related to NIDILRR's peer review process as described in § 1330.22. This commenter recommended that NIDILRR form advisory panels with members with diverse disabilities, including physical, sensory, intellectual, and mental disabilities, to be assigned to each peer review panel to ensure that disability perspectives are considered in the funding decision.

In addition, the commenter suggested reviewer training related to consistent weighting of scores, minimizing personal biases of reviewers, and reviewing and scoring application attachments. The commenter also suggested that NIDILRR provide training to the disability advisory panels to ensure that personal likes and dislikes of the reviewers not enter into the scoring.

Response: NIDILRR strongly supports a diversity of perspectives on peer review panels and makes every effort to include reviewers who have disabilities as well as subject-matter expertise relevant to the research or development topic. We are constantly seeking to recruit new, qualified individuals with disabilities for these purposes. We require our peer reviewers to attend an orientation session and, if they are new to our system, participate in training sessions to ensure that they understand the technical requirements of the process. NIDILRR staff monitors each panel to ensure that the review is carried out in a professional manner and further to ensure that each application is treated fairly.

To support the importance of research and development focused on the needs of individuals with disabilities, NIDILRR has already added a requirement that applicants must obtain input from individuals with disabilities and other stakeholders in shaping proposed research or development activities. NIDILRR is also finalizing approval of its Disability, Independent Living, and Rehabilitation Research Advisory Council (DILRRAC) which adheres to a statutory requirement that more than 50% of its membership be comprised of individuals with disabilities. We believe that this committee will provide valuable guidance regarding ways that we can improve the relevance of NIDILRR's research to individuals with disabilities. We are confident that all of these steps will address the commenters concerns without adding significant administrative burden and expense to the peer review process.

E. Collaboration

Comment: Two commenters suggested additions to the peer review criterion on collaboration in § 1330.24(k). Both suggested more specific requirements for collaboration with local and national consumer organizations, and one also included a recommendation for requiring meaningful collaboration with other relevant agencies, organizations, or institutions. In addition, one of the commenters suggested weighting the collaboration criterion more heavily.

Response: NIDILRR strongly agrees that it is important to seek appropriate collaboration where relevant to the specific research or development project being proposed. To this end, we have long had a collaboration review element which is required for many funding priorities. We believe that this requirement is adequate, and that to require it of all research or development projects would be misguided, as collaboration may not be relevant for the research topic or stage of research or development being proposed.

Specific weighting of review criteria is not prescribed by regulation so as to allow weighting as appropriate to the purpose and goals of each funding priority. More specific regulatory language on weighting would significantly limit NIDILRR's ability to match individual criteria with the topic of the priority at hand.

F. Notification of Review Scores and Comments

Comment: Two commenters suggested the insertion into regulation a requirement that applicants will receive reviewer scores and comments within 30 days of NIDILRR decisions.

Response: This is already a part of NIDILRR's grants management policy, and we make every effort to ensure that notification of scores and comments is provided within a 30 day timeframe. We believe that to specifically require this in regulation would be counter to the stated objectives of consolidating and simplifying the regulatory language, to which many commenters responded very favorably.

G. Posting of Applicant Scores

Comment: One commenter suggested that NIDILRR post a list of applicants and aggregate scores on its Web site at the conclusion of a competition.

Response: NIDILRR's goal is to fund rigorous and relevant research, as determine by an independent panel of individuals with subject-specific expertise and with knowledge of and sensitivity to the needs of individuals with disabilities. We ask these reviewers to provide detailed and thoughtful comments on the proposals they review, and we send this feedback to applicants in an effort to help build capacity in disability and rehabilitation research. We do not believe that listing unsuccessful applicants and their scores would further this goal, and believe that doing so would be contrary to HHS grants policy with regard to applicant privacy.

H. Meaning of "Product"

Comment: One organization raised several questions about the meaning of the term "product" in our discussion of stages of development, specifically requesting that NIDILRR define the term and what it includes. A related comment recommended that NIDILRR provide clarification to the concept of "proof of product" to ensure that it includes functional requirements such as accessibility and usability or market viability requirements such as price or performance. This commenter also suggested that NIDILRR elaborate on its expectations of the attributes associated with the stages of development. Finally, there was one comment asking that there be consistent use of the term product in the document.

Response: NIDILRR carefully considered these comments which helped us think about the extent to which we wanted to make the definition of "product" to be enumerative or non-enumerative and to allow for changes in conceptualization over time. Our conclusion is that flexibility is needed and beneficial. To this end, we are defining products as potentially encompassing but not necessarily limited to models, methods, tools, applications, and devices. Applicants can associate proposed products to these types or clarify and defend why proposed products lie outside of these types. Finally, we agree that it would contribute to clarity to use the term, "product" consistently in the document, and we have made this change accordingly.

I. Removal of "Scientific" From Peer Review Panels

Comment: A commenter suggested that NIDILRR remove the term "scientific" from the description of its peer review panels.

Response: NIDILRR's authorizing statute specifically requires the NIDILRR Director to provide for scientific review of all applications over which the Director has authority. 29 U.S.C. 762(f)(1). Given the statutory requirement, NIDILRR feels that it must adhere to this standard which confirms Congressional intent to ensure that NIDILRR carry out its peer review so that scientific expertise supports rigorous review that help ensures that NIDILRR funds the research that is likely to generate findings that will help improve the lives of individuals with disabilities. However, NIDILRR also notes that this section of the statute references inclusion of expertise regarding needs of individuals with disabilities and their families. To this end, we make every effort to have peer review panels that balance scientific expertise with knowledge relevant to individuals with disabilities and their families.

J. Role of the Director

Comment: One organization asked for clarification of the role of the Director in conducting evaluation of applications for NIDILRR funding, specifically inquiring whether the Director has sole discretion over the review.

Response: As stated in § 1330.21, the NIDILRR Director is required to refer each application to a peer review panel that reviews the application using the applicable peer review criteria as defined in § 1330.23. The ranking of the applications by the peer review panels determines which applicants are awarded funds, subject to special considerations in § 1330.25.

K. Role of the Director, Consistency

Comment: One commenter pointed out that, in § 1330.24(d), the reference to Secretary should refer to the NIDILRR Director for consistency with the rest of the section.

Response: We concur, and have corrected the regulatory text accordingly.

L. Applications Address the Needs of Individuals With Diverse Backgrounds

Comment: One commenter suggested that the language in § 1330.11 be changed so that the Director must require that applicants demonstrate how they will address the needs of individuals with disabilities from minority backgrounds.

Response: NIDILRR appreciates the concern behind this comment, and this language is often inserted into NIDILRR priorities. However, we feel that it is too prescriptive to require that the Director must do this in every instance, and that making this an absolute requirement will restrict the ability of the Director to establish criteria that support topics of research initiatives that may not benefit from such a requirement.

M. Composition of Panels

Comment: One commenter suggested that the language in § 1330.22 be changed so that the Director shall take into account factors including does the peer review panels include knowledgeable individuals with disabilities or disability advocates such as parents or family members and does the panel include individuals from diverse populations.

Response: NIDILRR appreciates the concern behind this comment. However, we feel that it is too prescriptive to require that the Director shall do this in every instance and that making this an absolute requirement will restrict the ability of the Director to establish peer review panels that best match the topics of proposed research proposals.

II. Impact Analysis

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The Department has determined that this rule is consistent with the priorities and principles set forth in Executive Order 12866. Executive Order 12866 encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. The rulemaking implements the Workforce Innovation and Opportunity Act of 2014. In developing the final rule, we considered input we received from the public including stakeholders. This final rule is not being treated as a "significant regulatory action" under section 3(f)(1) of Executive Order 12866. Accordingly, the final rule has not been reviewed by the Office of Management and Budget.

B. Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not have a significant economic impact on a substantial number of small entities. The primary impact of this regulation is on entities applying for NIDILRR funding opportunities, specifically researchers, States, public or private agencies and organizations, institutions of higher education, and Indian tribes and tribal organizations. The regulation does not have a significant economic impact on these entities. This rule is in fact significantly shorter than, but with identical compliance requirements to, the regulations it replaces.

C. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before an information collection request is submitted to the Office of Management and Budget (OMB) for review and approval. We are not introducing any new information collections in this rule however, nor revising reporting requirements.

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in expenditures by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million, adjusted for inflation, or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternatives that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by a rule.

ACL has determined that this rule does not result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector of more than $100 million in any one year.

E. Congressional Review

This rule is not a major rule as defined in 5 U.S.C. Section 804(2).

F. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations do not have an impact on family well-being as defined in the legislation.

G. Executive Order 13132

Executive Order 13132 on "federalism" was signed August 4, 1999. The purposes of the Order are: ". . . to guarantee the division of governmental responsibilities between the national government and the States that was intended by the Framers of the Constitution, to ensure that the principles of federalism established by the Framers guide the executive departments and agencies in the formulation and implementation of policies, and to further the policies of the Unfunded Mandates Reform Act . . ."

The Department certifies that this rule does not have a substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

ACL is not aware of any specific State laws that would be preempted by the adoption of the regulation.

List of Subjects in 45 CFR Part 1330

Grant programs, Research, Scholarships and fellowships.

Dated: April 20, 2016.

Kathy Greenlee,

Administrator, Administration for Community Living.

Approved: May 2, 2016.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

For the reasons stated in the preamble, the U.S. Department of Health and Human Services amends 45 CFR subchapter C by adding part 1330 to read as follows:

PART 1330—NATIONAL INSTITUTE FOR DISABILITY, INDEPENDENT LIVING, AND REHABILITATION RESEARCH

Subpart A—Disability, Independent Living, and Rehabilitation Research Projects and Centers Program

Sec.
1330.1 General.
1330.2 Eligibility for assistance and other regulations and guidance.
1330.3 Definitions.
1330.4 Stages of research.
1330.5 Stages of development.

Subpart B—Requirements for Awardees

1330.10 General requirements for awardees.
1330.11 Individuals with disabilities from minority backgrounds.

Subpart C—Selection of Awardees

1330.20 Peer review purpose.
1330.21 Peer review process.
1330.22 Composition of peer review panel.
1330.23 Evaluation process.
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1330.40 Spinal cord injuries program.

Authority: 29 U.S.C. 709, 3343.

Subpart A—Disability, Independent Living, and Rehabilitation Research Projects and Centers Program

§ 1330.1 General.

(a) The Disability, Independent Living, and Rehabilitation Research Projects and Centers Program provides grants to establish and support:

(1) The following Disability, Independent Living, and Rehabilitation Research and Related Projects:

(i) Disability, Independent Living, and Rehabilitation Research Projects;

(ii) Field-Initiated Projects;

(iii) Advanced Rehabilitation Research Training Projects; and

(2) The following Disability, Independent Living, and Rehabilitation Research Centers:

(i) Rehabilitation Research and Training Centers;

(ii) Rehabilitation Engineering Research Centers.

(b) The purpose of the Disability, Independent Living, and Rehabilitation Research Projects and Centers Program is to plan and conduct research, development, demonstration projects, training, dissemination, and related activities, including international activities, to:

(1) Develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, education, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and

(2) Improve the effectiveness of services authorized under the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*

§ 1330.2 Eligibility for assistance and other regulations and guidance.

(a) Unless otherwise stated in this part or in a determination by the NIDILRR Director, the following entities are eligible for an award under this program:

(1) States.

(2) Public or private agencies, including for-profit agencies.

(3) Public or private organizations, including for-profit organizations.

(4) Institutions of higher education.

(5) Indian tribes and tribal organizations.

(b) Other sources of regulation which may apply to awards under this part include but are not limited to:

(1) 45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

(2) 45 CFR part 46—Protection of Human Subjects.

(3) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards.

(4) 2 CFR parts 376 and 382—Nonprocurement Debarment and Suspension and Requirements for Drug-Free Workplace (Financial Assistance).

(5) 45 CFR part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

(6) 45 CFR part 81—Practice and Procedure for Hearings under part 80 of this title.

(7) 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance.

(8) 45 CFR part 86—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

(9) 45 CFR part 87—Equal Treatment of Faith-Based Organizations.

(10) 45 CFR part 91—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from HHS.

(11) 45 CFR part 93—New Restrictions on Lobbying.

§ 1330.3 Definitions.

As used in this part:

(a) *Secretary* means the Secretary of the Department of Health and Human Services.

(b) *Administrator* means the Administrator of the Administration for Community Living.

(c) *Director* means the Director of the National Institute on Disability, Independent Living, and Rehabilitation Research.

(d) *Research* is classified on a continuum from basic to applied:

(1) *Basic research* is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) *Applied research* is research in which the investigator is primarily interested in developing new knowledge, information, or understanding which can be applied to a predetermined rehabilitation problem or need.

(e) *Development activities* use knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes.

(f) *Products* encompass models, methods, tools, applications, and devices, but are not necessarily limited to these types.

§ 1330.4 Stages of research.

For any Disability, Independent Living, and Rehabilitation Research Projects and Centers Program competition, the Department may require in the application materials for the competition that the applicant identify the stage(s) of research in which it will focus the work of its proposed project or center. The four stages of research are:

(a) *Exploration and discovery* mean the stage of research that generates hypotheses or theories through new and refined analyses of data, producing observational findings and creating other sources of research-based information. This research stage may include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results achieved under this stage of research may inform the development of interventions or lead to evaluations of interventions or policies. The results of the exploration and discovery stage of research may also be used to inform decisions or priorities;

(b) *Intervention development* means the stage of research that focuses on generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and assessing the feasibility of conducting a well-designed intervention study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention;

(c) *Intervention efficacy* means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support "scaling-up" an intervention to other sites and contexts. This stage of research may include assessing the training needed for wide-scale implementation of the intervention, and approaches to evaluation of the intervention in real-world applications; and

(d) *Scale-up evaluation* means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. The project examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed studies of an intervention that has been widely adopted in practice, but lacks a sufficient evidence base to demonstrate its effectiveness.

§ 1330.5 Stages of development.

For any Disability, Independent Living, and Rehabilitation Research Projects and Centers Program competition, the Department may require in the notice inviting applications for the competition that the applicant identify the stage(s) of development in which it will focus the work of its proposed project or center. The three stages of development are:

(a) *Proof of concept* means the stage of development where key technical challenges are resolved. Stage activities may include recruiting study participants, verifying product requirements; implementing and testing (typically in controlled contexts) key concepts, components, or systems, and resolving technical challenges. A technology transfer plan is typically developed and transfer partner(s) identified; and plan implementation may have started. Stage results establish that a product concept is feasible.

(b) *Proof of product* means the stage of development where a fully-integrated and working prototype, meeting critical technical requirements is created. Stage activities may include recruiting study participants, implementing and iteratively refining the prototype, testing the prototype in natural or less-controlled contexts, and verifying that all technical requirements are met. A technology transfer plan is typically ongoing in collaboration with the transfer partner(s). Stage results establish that a product embodiment is realizable.

(c) *Proof of adoption* means the stage of development where a product is substantially adopted by its target population and used for its intended purpose. Stage activities typically include completing product refinements; and continued implementation of the technology transfer plan in collaboration with the transfer partner(s). Other activities include measuring users' awareness of the product, opinion of the product, decisions to adopt, use, and retain products; and identifying barriers and facilitators impacting product adoption. Stage results establish that a product is beneficial.

Subpart B—Requirements for Awardees

§ 1330.10 General requirements for awardees.

(a) In carrying out a research activity under this program, an awardee must:

(1) Identify one or more hypotheses or research questions;

(2) Based on the hypotheses or research question identified, perform an intensive systematic study in accordance with its approved application directed toward:

(i) New or full scientific knowledge; or

(ii) Understanding of the subject or problem being studied.

(b) In carrying out a development activity under this program, an awardee must create, using knowledge and understanding gained from research, models, methods, tools, systems, materials, devices, applications, or standards that are adopted by and beneficial to the target population. Development activities span one or more stages of development.

(c) In carrying out a training activity under this program, an awardee shall conduct a planned and systematic sequence of supervised instruction that is designed to impart predetermined skills and knowledge.

(d) In carrying out a demonstration activity under this program, an awardee shall apply results derived from previous research, testing, or practice to determine the effectiveness of a new strategy or approach.

(e) In carrying out a utilization activity under this program, a grantee must relate research findings to practical applications in planning, policy making, program administration, and delivery of services to individuals with disabilities.

(f) In carrying out a dissemination activity under this program, a grantee must systematically distribute information or knowledge through a variety of ways to potential users or beneficiaries.

(g) In carrying out a technical assistance activity under this program, a grantee must provide expertise or information for use in problem-solving.

§ 1330.11 Individuals with disabilities from minority backgrounds.

(a) If the director so indicates in the application materials or elsewhere, an applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

(b) The approaches an applicant may take to meet this requirement may include one or more of the following:

(1) Proposing project objectives addressing the needs of individuals with disabilities from minority backgrounds.

(2) Demonstrating that the project will address a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(3) Demonstrating that individuals from minority backgrounds will be included in study samples in sufficient numbers to generate information pertinent to individuals with disabilities from minority backgrounds.

(4) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(5) Providing outreach to individuals with disabilities from minority backgrounds to ensure that they are aware of rehabilitation services, clinical care, or training offered by the project.

(6) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

Subpart C—Selection of Awardees

§ 1330.20 Peer review purpose.

The purpose of peer review is to insure that:

(a) Those activities supported by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) are of the highest scientific, administrative, and technical quality; and

(b) Activity results may be widely applied to appropriate target populations and rehabilitation problems.

§ 1330.21 Peer review process.

(a) The Director refers each application for an award governed by these regulations in this part to a peer review panel established by the Director.

(b) Peer review panels review applications on the basis of the applicable selection criteria in § 1330.23.

§ 1330.22 Composition of peer review panel.

(a) The Director selects as members of a peer review panel scientists and other experts in disability, independent living, rehabilitation or related fields who are qualified, on the basis of training, knowledge, or experience, to give expert advice on the merit of the applications under review.

(b) The scientific peer review process shall be conducted by individuals who are not Department of Health and Human Services employees.

(c) In selecting members to serve on a peer review panel, the Director may take into account the following factors:

(1) The level of formal scientific or technical education completed by potential panel members.

(2) The extent to which potential panel members have engaged in scientific, technical, or administrative activities appropriate to the category of applications that the panel will consider; the roles of potential panel members in those activities; and the quality of those activities.

(3) The recognition received by potential panel members as reflected by awards and other honors from scientific

and professional agencies and organizations outside the Department.

(4) Whether the panel includes knowledgeable individuals with disabilities, or parents, family members, guardians, advocates, or authorized representatives of individuals with disabilities.

(5) Whether the panel includes individuals from diverse populations.

§ 1330.23 Evaluation process.

(a) The Director selects one or more of the selection criteria to evaluate an application:

(1) The Director establishes selection criteria based on statutory provisions that apply to the Program which may include, but are not limited to:

(i) Specific statutory selection criteria;

(ii) Allowable activities;

(iii) Application content requirements; or

(iv) Other pre-award and post-award conditions; or

(2) The Director may use a combination of selection criteria established under paragraph (a)(1) of this section and selection criteria from § 1330.24 to evaluate a competition.

(3) For Field-Initiated Projects, the Director does not consider § 1330.24(b) (Responsiveness to the Absolute or Competitive Priority) in evaluating an application.

(b) In considering selection criteria in § 1330.24, the Director selects one or more of the factors listed in the criteria, but always considers the factor in § 1330.24(n) regarding members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(c) The maximum possible score for an application is 100 points.

(d) In the application package or a notice published in the **Federal Register**, the Director informs applicants of:

(1) The selection criteria chosen and the maximum possible score for each of the selection criteria; and

(2) The factors selected for considering the selection criteria and if points are assigned to each factor, the maximum possible score for each factor under each criterion. If no points are assigned to each factor, the Director evaluates each factor equally.

(e) For all instances in which the Director chooses to allow field-initiated research and development, the selection criteria in § 1330.25 will apply, including the requirement that the applicant must achieve a score of 85 percent or more of maximum possible points.

§ 1330.24 Selection criteria.

In addition to criteria established under § 1330.23(a)(1), the Director may select one or more of the following criteria in evaluating an application:

(a) *Importance of the problem.* In determining the importance of the problem, the Director considers one or more of the following factors:

(1) The extent to which the applicant clearly describes the need and target population.

(2) The extent to which the proposed activities further the purposes of the Rehabilitation Act.

(3) The extent to which the proposed activities address a significant need of individuals with disabilities.

(4) The extent to which the proposed activities address a significant need of rehabilitation service providers.

(5) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities.

(6) The extent to which the applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to a trainee population in which there is a need for more qualified researchers.

(7) The extent to which the proposed project will have beneficial impact on the target population.

(b) *Responsiveness to an absolute or competitive priority.* In determining the application's responsiveness to the application package or the absolute or competitive priority published in the **Federal Register**, the Director considers one or more of the following factors:

(1) The extent to which the applicant addresses all requirements of the absolute or competitive priority.

(2) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority.

(c) *Design of research activities.* In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art.

(2) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which:

(i) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art;

(ii) Each research hypothesis or research question, as appropriate, is theoretically sound and based on current knowledge;

(iii) Each sample is drawn from an appropriate, specified population and is of sufficient size to address the proposed hypotheses or research questions, as appropriate, and to support the proposed data analysis methods;

(iv) The source or sources of the data and the data collection methods are appropriate to address the proposed hypotheses or research questions and to support the proposed data analysis methods;

(v) The data analysis methods are appropriate;

(vi) Implementation of the proposed research design is feasible, given the current state of the science and the time and resources available;

(vii) Input of individuals with disabilities and other key stakeholders is used to shape the proposed research activities; and

(viii) The applicant identifies and justifies the stage of research being proposed and the research methods associated with the stage.

(3) The extent to which anticipated research results are likely to satisfy the original hypotheses or answer the original research questions, as appropriate, and could be used for planning additional research, including generation of new hypotheses or research questions, where applicable.

(4) The extent to which the stage of research is identified and justified in the description of the research project(s) being proposed.

(d) *Design of development activities.* In determining the extent to which the project design is likely to be effective in accomplishing project objectives, the Director considers one or more of the following factors:

(1) The extent to which the proposed project identifies a significant need and a well-defined target population for the new or improved product;

(2) The extent to which the proposed project methodology is meritorious, including consideration of the extent to which:

(i) The proposed project shows awareness of the state-of-the-art for current, related products;

(ii) The proposed project employs appropriate concepts, components, or systems to develop the new or improved product;

(iii) The proposed project employs appropriate samples in tests, trials, and other development activities;

(iv) The proposed project conducts development activities in appropriate environment(s);

(v) Input from individuals with disabilities and other key stakeholders is obtained to establish and guide proposed development activities; and

(vi) The applicant identifies and justifies the stage(s) of development for the proposed project; and activities associated with each stage.

(3) The new product will be developed and tested in an appropriate environment.

(e) *Design of demonstration activities.* In determining the extent to which the design of demonstration activities is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the proposed demonstration activities build on previous research, testing, or practices.

(2) The extent to which the proposed demonstration activities include the use of proper methodological tools and theoretically sound procedures to determine the effectiveness of the strategy or approach.

(3) The extent to which the proposed demonstration activities include innovative and effective strategies or approaches.

(4) The extent to which the proposed demonstration activities are likely to contribute to current knowledge and practice and be a substantial addition to the state-of-the-art.

(5) The extent to which the proposed demonstration activities can be applied and replicated in other settings.

(f) *Design of training activities.* In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety.

(2) The extent to which the proposed training methods are of sufficient quality, intensity, and duration.

(3) The extent to which the proposed training content:

(i) Covers all of the relevant aspects of the subject matter; and

(ii) If relevant, is based on new knowledge derived from research activities of the proposed project.

(4) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials.

(5) The extent to which the proposed training materials and methods are accessible to individuals with disabilities.

(6) The extent to which the applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees, including those who are individuals with disabilities.

(7) The extent to which the applicant is able to carry out the training activities, either directly or through another entity.

(8) The extent to which the proposed didactic and classroom training programs emphasize scientific methodology and are likely to develop highly qualified researchers.

(9) The extent to which the quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to develop highly qualified researchers.

(10) The extent to which the type, extent, and quality of the proposed research experience, including the opportunity to participate in advanced-level research, are likely to develop highly qualified researchers.

(11) The extent to which the opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(g) *Design of dissemination activities.* In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the content of the information to be disseminated:

(i) Covers all of the relevant aspects of the subject matter; and

(ii) If appropriate, is based on new knowledge derived from research activities of the project.

(2) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format.

(3) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration.

(4) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter.

(5) The extent to which the information to be disseminated will be accessible to individuals with disabilities.

(h) *Design of utilization activities.* In determining the extent to which the design of utilization activities is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the potential new users of the information or technology have a practical use for the information and are likely to adopt the practices or use the information or technology, including new devices.

(2) The extent to which the utilization strategies are likely to be effective.

(3) The extent to which the information or technology is likely to be of use in other settings.

(i) *Design of technical assistance activities.* In determining the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project, the Director considers one or more of the following factors:

(1) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration.

(2) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter.

(3) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information.

(4) The extent to which the technical assistance is accessible to individuals with disabilities.

(j) *Plan of operation.* In determining the quality of the plan of operation, the Director considers one or more of the following factors:

(1) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks.

(2) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective.

(k) *Collaboration.* In determining the quality of collaboration, the Director considers one or more of the following factors:

(1) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project.

(2) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant.

(3) The extent to which agencies, organizations, or institutions that commit to collaborate with the applicant have the capacity to carry out collaborative activities.

(l) *Adequacy and reasonableness of the budget.* In determining the adequacy and the reasonableness of the proposed budget, the Director considers one or more of the following factors:

(1) The extent to which the costs are reasonable in relation to the proposed project activities.

(2) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities.

(3) The extent to which the applicant is of sufficient size, scope, and quality to effectively carry out the activities in an efficient manner.

(m) *Plan of evaluation.* In determining the quality of the plan of evaluation, the Director considers one or more of the following factors:

(1) The extent to which the plan of evaluation provides for periodic assessment of progress toward:

(i) Implementing the plan of operation; and

(ii) Achieving the project's intended outcomes and expected impacts.

(2) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments.

(3) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that:

(i) Are clearly related to the intended outcomes of the project and expected impacts on the target population; and

(ii) Are objective, and quantifiable or qualitative, as appropriate.

(n) *Project staff.* In determining the quality of the project staff, the Director considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Director considers one or more of the following:

(1) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities.

(2) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project.

(3) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas.

(4) The extent to which the project staff includes outstanding scientists in the field.

(5) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority.

(o) *Adequacy and accessibility of resources.* In determining the adequacy and accessibility of the applicant's resources to implement the proposed project, the Director considers one or more of the following factors:

(1) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate.

(2) The quality of an applicant's past performance in carrying out a grant.

(3) The extent to which the applicant has appropriate access to populations and organizations representing individuals with disabilities to support advanced disability, independent living and clinical rehabilitation research.

(4) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project.

(p) *Quality of the project design.* In determining the quality of the design of the proposed project, the Director considers one or more of the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The quality of the methodology to be employed in the proposed project.

(3) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(4) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(5) The extent to which the proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products.

(6) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(7) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(8) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

§ 1330.25 Additional considerations for field-initiated priorities.

(a) The Director reserves funds to support field-initiated applications funded under this part when those applications have been awarded points totaling 85 percent or more of the maximum possible points under the procedures described in § 1330.23.

(b) In making a final selection from applications received when NIDILRR uses field-initiated priorities, the Director may consider whether one of the following conditions is met and, if so, use this information to fund an application out of rank order:

(1) The proposed project represents a unique opportunity to advance rehabilitation and other knowledge to improve the lives of individual with disabilities.

(2) The proposed project complements or balances research activity already planned or funded by NIDILRR through its annual priorities or addresses the research in a new and promising way.

(c) If the Director funds an application out of rank order under paragraph (b) of this section, the public will be notified through a notice on the NIDILRR Web site or through other means deemed appropriate by the Director.

Subpart D—Disability, Independent Living, and Rehabilitation Research Fellowships

§ 1330.30 Fellows program.

(a) The purpose of this program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on rehabilitation, independent living, and other experiences and outcomes of individuals with disabilities.

(b) The eligibility requirements for the Fellows program are as follows:

(1) Only individuals are eligible to be recipients of Fellowships.

(2) Any individual is eligible for assistance under this program who has training and experience that indicate a potential for engaging in scientific research related to rehabilitation and independent living for individuals with disabilities.

(3) This program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships.

(i) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to disability and rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(ii) The Director awards Merit Fellowships to individuals in earlier stages of their careers in research. To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

(c) Fellowships will be awarded in the form of a grant to eligible individuals.

(d) In making a final selection of applicants to support under this program, the Director considers the extent to which applicants present a unique opportunity to effect a major advance in knowledge, address critical problems in innovative ways, present proposals which are consistent with the Institute's Long-Range Plan, build research capacity within the field, or complement and significantly increases the potential value of already planned research and related activities.

Subpart E—Special Projects and Demonstrations for Spinal Cord Injuries

§ 1330.40 Spinal cord injuries program.

(a) This program provides assistance to establish innovative projects for the delivery, demonstration, and evaluation of comprehensive medical, vocational, independent living, and rehabilitation services to meet the wide range of needs of individuals with spinal cord injuries.

(b) The agencies and organizations eligible to apply under this program are described in § 1330.2.

[FR Doc. 2016–10853 Filed 5–10–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2016–0006; FXES11130900000C6–167–FF09E42000]

RIN 1018–BA89

Endangered and Threatened Wildlife; Technical Corrections for Eight Wildlife Species on the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Partial withdrawal of direct final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are withdrawing, in part, a February 17, 2016, direct final rule that revises the taxonomy of eight wildlife species under the Endangered Species Act of 1973, as amended (Act). For the Newell's Townsend's shearwater (*Puffinus auricularis newelli*), we received significant adverse comments relating to additional scientific research relevant to its taxonomic classification; therefore, we are withdrawing the amendments in the direct final rule for this species only. The amendments in the direct final rule for the other seven species (Oahu elepaio (*Chasiempis ibidis*), Kauai akialoa (*Akialoa stejnegeri*), akiapolaau (*Hemignathus wilsoni*), Kauai nukupuu (*Hemignathus hanapepe*), Maui nukupuu (*Hemignathus affinis*), Hawaii akepa (*Loxops coccineus*), and Maui akepa (*Loxops ochraceus*)) will be effective on May 17, 2016.

DATES: Effective May 11, 2016, the Service withdraws amendatory instructions 2.f and 2.g published at 81 FR 8007 on February 17, 2016.

ADDRESSES: The direct final rule may be found online at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2016–0006.

FOR FURTHER INFORMATION CONTACT: Marilet Zablan, Program Manager for Restoration and Endangered Species Classification, U.S. Fish and Wildlife Service, Pacific Regional Office, Ecological Services, 911 NE 11th Avenue, Portland, OR 97232; telephone 503–231–6131. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY (telephone typewriter or teletypewriter) assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

Our regulations at 50 CFR 17.11(b) direct us to use the most recently accepted scientific names for species on the List of Endangered and Threatened Wildlife (50 CFR 17.11(h)). Accordingly, on February 17, 2016, we published in the **Federal Register** a direct final rule (81 FR 8004) to revise the taxonomy and nomenclature of eight Hawaiian bird species listed under section 4 of the Act (16 U.S.C. 1531 *et seq.*). All of these changes are supported by peer-reviewed scientific studies and reflect the taxonomy that has been accepted by the American Ornithologists' Union (AOU) in the most recent supplements to the Check-list of North American Birds. Specific references relevant to each species are cited in the text of the February 17, 2016, direct final rule, and are posted as supporting documents at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2016–0006.

Consequently, we published the direct final rule without a prior proposal because we considered it a noncontroversial action that was in the best interest of the public and should be undertaken in as timely a manner as possible. We stated that if we received significant adverse comments regarding the taxonomic changes for any of these species, we would publish a document in the **Federal Register** withdrawing this rule for the appropriate species before the effective date. Significant adverse comments are comments that provide strong justifications as to why the rule should not be adopted or why it should be changed.

Comments on the Direct Final Rule

We received three comments on the direct final rule. One of these comments called our attention to recently published genetic research on shearwaters (Martínez-Gómez *et al.* 2015) that recommends maintaining the Hawaiian taxon *newelli* (Newell's Townsend's shearwater, or Newell's shearwater) as a subspecies of the Townsend's shearwater, under the scientific name *Puffinus auricularis newelli*. This recommendation is contrary to the determination of the direct final rule and the AOU Checklist Committee (Chesser *et al.* 2015) that Newell's shearwater is a distinct species (*Puffinus newelli*). The commenter requested that this discrepancy be further considered before we adopt the taxonomic change set forth in the direct final rule. Another commenter discussed behavioral differences between Newell's shearwater and Townsend's shearwater, while also providing a link to an article summarizing the Martínez-Gómez research results. We concur that these comments are significant and that the taxonomic status of Newell's shearwater merits further consideration. Therefore, we are withdrawing that portion of the direct final rule concerning the listed entity Newell's Townsend's shearwater (*Puffinus auricularis newelli*). In the future, we may propose changes in the taxonomy of Newell's Townsend's shearwater with opportunity for further public comment.

Other topics discussed in the comments were not specific to the taxonomic issues raised in the direct final rule. We did not receive significant adverse comments concerning the taxonomy of the Oahu elepaio, Kauai akialoa, akiapolaau, Kauai nukupuu, Maui nukupuu, Hawaii akepa, or Maui akepa.

Partial Withdrawal of the Direct Final Rule

For the reasons stated above, we withdraw amendatory instructions 2.f and 2.g of the direct final rule published on February 17, 2016, at 81 FR 8004–8007.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: April 28, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–11039 Filed 5–10–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 150623546–6395–02]

RIN 0648–BF18

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendments to the Reef Fish, Spiny Lobster, Queen Conch, and Corals and Reef Associated Plants and Invertebrates Fishery Management Plans of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures described in Amendment 7 to the Fishery Management Plan (FMP) for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (USVI) (Reef Fish FMP), Amendment 6 to the FMP for the Spiny Lobster Fishery of Puerto Rico and the USVI (Spiny Lobster FMP), Amendment 5 to the FMP for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the USVI (Coral FMP), and Amendment 4 to the FMP for the Queen Conch Resources of Puerto Rico and the USVI (Queen Conch FMP), as prepared by the Caribbean Fishery Management Council (Council). In combination, these amendments represent the Application of Accountability Measures (AM) Amendment (AM Application Amendment). The AM Application Amendment resolves an existing inconsistency between language in the FMPs and the regulations implementing the application of AMs in the U.S. Caribbean exclusive economic zone (EEZ). The purpose of the AM Application Amendment is to ensure the authorizing FMPs are consistent with the regulations governing AMs in the Caribbean EEZ. Additionally, this final rule clarifies the AM closure provisions, the application of the spiny lobster ACL in the Puerto Rico management area of the Caribbean EEZ, and the minimum size limit for queen conch in the Caribbean EEZ.

DATES: This final rule is effective June 10, 2016.

ADDRESSES: Electronic copies of the AM Application Amendment, which includes an environmental assessment, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/caribbean/index.html.*

FOR FURTHER INFORMATION CONTACT: María del Mar López, telephone: 727–824–5305; email: *maria.lopez@noaa.gov.*

SUPPLEMENTARY INFORMATION: In the Caribbean EEZ, the reef fish, spiny lobster, queen conch, and corals and reef associated plants and invertebrates fisheries are managed under their respective FMPs. The FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On February 4, 2016, NMFS published a notice of availability for the AM Application Amendment and requested public comment (81 FR 5978). On February 26, 2016, NMFS published a proposed rule for the AM Application Amendment and regulatory clarifications not contained in the amendment and requested public comment (81 FR 9800). The proposed rule and the AM Application Amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by the AM Application Amendment and this final rule is provided below.

The final rule implementing Amendment 2 to the Queen Conch FMP and Amendment 5 to the Reef Fish FMP (2010 Caribbean Annual Catch Limit (ACL) Amendment) established ACLs and AMs for species/species groups that were at the time experiencing overfishing (*i.e.,* parrotfish, snapper, grouper, queen conch) (76 FR 82404, December 30, 2011). The final rule implementing Amendment 3 to the Queen Conch FMP, Amendment 6 to the Reef Fish FMP, Amendment 5 to the Spiny Lobster FMP, and Amendment 3 to the Coral FMP (2011 Caribbean ACL Amendment) established ACLs and AMs for the remaining Council-managed species/species groups which were not undergoing overfishing at the time or for which the overfishing status was unknown (*e.g.,* grunts, squirrelfish, jacks, spiny lobster) (76 FR 82414, December 30, 2011). As described at § 622.12(a) for reef fish, spiny lobster, and corals and at § 622.491(b) for queen conch, the current AM regulations in the Caribbean EEZ require NMFS to shorten the length of the fishing season for a species/species group in the year following a determination that the applicable 3-year landings average exceeded the respective ACL, unless NMFS determines that the exceedance is due to enhanced data collection and monitoring efforts. The extent to which fishing seasons are shortened in the year following an ACL overage equates to the number of days necessary to account for the overage and to constrain landings to the ACL. Pursuant to regulations at §§ 622.12(a) and 622.491(b), any such AM-based closures apply only during the fishing year for which they are implemented. However, the AM closure language in the four FMPs states that any AM-based closure "will remain in effect until modified by the Council," thereby carrying these closures over from year to year, unless or until the closures are revised by subsequent Council action.

The AM Application Amendment corrects this inconsistency, between the language in the FMPs and the regulatory language at §§ 622.12(a) and 622.491(b), by revising the language within the four

FMPs to be consistent with the language in the regulations. Specifically, the phrase in the four FMPs that states "The needed changes will remain in effect until modified by the Council," which describes the duration of AMs, will be removed from the four FMPs. The result of this change is that under both the FMPs and the AM-based closure regulatory language, any AM-based closure would only apply for the fishing year for which it was implemented. The Council determined that this approach is consistent with their intent and is consistent with the regulations used by NMFS to apply AMs in the Caribbean EEZ. As this change only revises the language in the respective FMPs, no changes to the codified text are necessary.

Additional Changes to Codified Text Not Part of the AM Application Amendment

This final rule also revises items in the codified text that are not part of the AM Application Amendment. Specifically, NMFS clarifies the closure provisions when an ACL has been exceeded and an AM is implemented, based on the Council's intent as expressed in the 2010 and 2011 Caribbean ACL Amendments (76 FR 82404, December 30, 2011, and 76 FR 82414, December 30, 2011). NMFS also clarifies the application of the spiny lobster ACL for the Puerto Rico management area of the EEZ to be consistent with the Council's intent expressed in the 2011 Caribbean ACL Amendment and clarifies the minimum size requirements for queen conch.

The 2010 and 2011 Caribbean ACL Amendments established AMs and ACLs and allocated those ACLs among three Caribbean island management areas, *i.e.,* the Puerto Rico, St. Croix, and St. Thomas/St. John management areas of the EEZ, as specified in Appendix E to part 622, except for the ACLs for tilefish and aquarium trade species, which are specified for the Caribbean EEZ as a whole. The ACLs for species/species groups in the Puerto Rico management area, except for spiny lobster, are further allocated between the commercial and recreational sectors, and AMs apply to each of these sectors separately. Through this final rule, NMFS clarifies that the spiny lobster ACL for the Puerto Rico management area is applied as a single ACL for both the commercial and recreational sectors, consistent with the intent of the Council in the 2011 Caribbean ACL Amendment (76 FR 82414, December 30, 2011). The current regulations, as described in § 622.12(a)(1)(i)(R), specify only a commercial ACL for spiny lobster in the Puerto Rico management area and do not specify a recreational ACL. The intent of the Council in the 2011 Caribbean ACL Amendment was to manage the spiny lobster commercial and recreational sectors for the Puerto Rico management area under the same ACL, derived from commercial landings. The Council intended that this single ACL would be the trigger to apply the AM to both sectors for spiny lobster in the Puerto Rico management area. NMFS proposes to add paragraph § 622.12(a)(1)(iii) to the regulatory text to specify that the spiny lobster ACL applies to both sectors in the Puerto Rico management area. The actual ACL value will not change through this final rule.

The ACLs for species/species groups in the St. Croix and St. Thomas/St. John management areas are not allocated between sectors, and if AMs are triggered, they are applied to both the commercial and recreational sector.

The current Caribbean AM and closure regulations do not specifically state what restrictions on fishing occur during an AM-based closure. Through this final rule, NMFS adds to the regulatory text at § 622.12(b) that, if AMs are triggered as a result of an ACL overage and NMFS reduces the length of the fishing season for a species or species group, certain closure provisions will apply to species with Caribbean-wide ACLs, Caribbean reef fish species, and Caribbean spiny lobster.

For Caribbean reef fish species in the Puerto Rico management area, § 622.12(b)(1)(i) through (iii) are added to specify what restrictions apply during a commercial closure, recreational closure, or a closure of both sectors. In the event that the commercial fishing season is reduced for a species or species group due to a Puerto Rico commercial ACL overage, all harvest or possession of the indicated species or species group in or from the Puerto Rico management area would be limited to the bag and possession limits specified in § 622.437, and the sale or purchase of the indicated species or species group in or from the Puerto Rico management area would be prohibited during the closure. If the recreational fishing season is reduced for a species or species group due to a Puerto Rico recreational ACL overage, the bag and possession limits for the indicated species or species group would be zero during the closure. If both the commercial and recreational sectors for a species or species group in the Puerto Rico management area are closed, such species or species groups in or from the Puerto Rico management area may not be harvested, possessed, purchased, or sold and the bag and possession limits for such species or species groups would be zero.

For Caribbean reef fish species and spiny lobster in the St. Croix and St. Thomas/St. John island management areas, and species or species groups with Caribbean-wide ACLs, § 622.12(b)(2) is added to specify that, if AMs are triggered as a result of an ACL overage and the fishing season is reduced for a species or species group, such species or species groups in or from the applicable management area of the Caribbean EEZ may not be harvested, possessed, purchased, or sold, and the bag and possession limits for such species in or from the applicable management area of the Caribbean EEZ would be zero.

For Caribbean spiny lobster in the Puerto Rico management area, § 622.12(b)(1)(iv) is added to clarify that, if the AM is triggered due to a Puerto Rico spiny lobster ACL overage, the commercial and recreational fishing seasons are reduced. During such a closure, spiny lobster in or from the Puerto Rico management area may not be harvested, possessed, purchased, or sold, and the bag and possession limits for spiny lobster in or from the Puerto Rico management area would be zero.

Additionally, through this final rule, NMFS revises § 622.492(a) to clarify the minimum size limit for a Caribbean queen conch. Currently, § 622.492(a) states that the minimum size limit is "9 inches (22.9 cm) in length, that is, from the tip of the spire to the distal end of the shell, and 3/8 inch (9.5 cm) in lip width at its widest point." However, this provision goes on to state that "A queen conch with a length of at least 9 inches (22.9 cm) or a lip width of at least 3/8 inch (9.5 mm) is not undersized." The use of "and" in the first sentence and "or" in the second sentence of this provision has caused confusion among the public about whether both of these measurements are required to meet the minimum size limit for queen conch. Therefore, NMFS changes the "and" to "or" in the first sentence and removes the second sentence in paragraph (a) of § 622.492. The purpose of this change is to clarify that only one of the measurement descriptions must be met to fulfill the minimum size limit for Caribbean queen conch, consistent with the original intent of the Council in the Queen Conch FMP.

Comments and Responses

NMFS received three total comments on the AM Application Amendment and the proposed rule. One comment expressed overall support for the actions in the amendment and the rule. A Federal agency stated that they had no comment on the amendment or the proposed rule. One comment was not related to the actions in the amendment or the proposed rule. Therefore, no changes were made to this final rule based on public comment.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with the AM Application Amendment, the FMPs, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding this certification or on the economic impacts of the rule more generally, and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis is not required and none was prepared.

List of Subjects in 50 CFR Part 622

Accountability measures, Caribbean, Fisheries, Fishing, Queen conch.

Dated: May 5, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.12, remove paragraph (a)(1)(i)(R) and add paragraphs (a)(1)(iii) and (b).

The additions read as follows:

§ 622.12 Annual catch limits (ACLs) and accountability measures (AMs) for Caribbean Island management areas/Caribbean EEZ.

* * * * *

(a) * * *

(1) * * *

(iii) *Spiny lobster.* The following ACL applies to landings of spiny lobster throughout the Puerto Rico management area—327,920 lb (148,742 kg).

* * * * *

(b) *Closure provisions*—(1) *Restrictions applicable after a Puerto Rico closure.* (i) *Restrictions applicable after a Puerto Rico commercial closure, except for spiny lobster.* During the closure period announced in the notification filed pursuant to paragraph (a)(1)(i) of this section, the commercial sector for species or species groups included in the notification is closed and such species or species groups in or from the Puerto Rico management area may not be purchased or sold. Harvest or possession of such species or species groups in or from the Puerto Rico management area is limited to the recreational bag and possession limits unless the recreational sector for the species or species group is closed and the restrictions specified in paragraph (b)(1)(iii) of this section apply.

(ii) *Restrictions applicable after a Puerto Rico recreational closure, except for spiny lobster.* During the closure period announced in the notification filed pursuant to paragraph (a)(1)(ii) of this section, the recreational sector for species or species groups included in the notification is closed and the recreational bag and possession limits for such species or species groups in or from the Puerto Rico management area are zero. If the seasons for both the commercial and recreational sectors for such species or species groups are closed, the restrictions specified in paragraph (b)(1)(iii) of this section apply.

(iii) *Restrictions applicable when both Puerto Rico commercial and Puerto Rico recreational sectors are closed, except for spiny lobster.* If the seasons for both the commercial and recreational sectors for a species or species group are closed, such species or species groups in or from the Puerto Rico management area may not be harvested, possessed, purchased, or sold, and the bag and possession limits for such species or species groups in or from the Puerto Rico management area are zero.

(iv) *Restrictions applicable after a spiny lobster closure in Puerto Rico.* During the closure period announced in the notification filed pursuant to paragraph (a)(1)(iii) of this section, both the commercial and recreational sectors are closed. Spiny lobster in or from the Puerto Rico management area may not be harvested, possessed, purchased, or sold, and the bag and possession limits for spiny lobster in or from the Puerto Rico management area are zero.

(2) *Restrictions applicable after a St. Croix, St. Thomas/St. John, or Caribbean EEZ closure.* During the closure period announced in the notification filed pursuant to paragraph (a)(2), (3), or (4) of this section, such species or species groups in or from the applicable management area of the Caribbean EEZ may not be harvested, possessed, purchased, or sold, and the bag and possession limits for such species or species groups in or from the applicable management area of the Caribbean EEZ are zero.

■ 3. In § 622.492, paragraph (a) is revised to read as follows:

§ 622.492 Minimum size limit.

(a) The minimum size limit for Caribbean queen conch is either 9 inches (22.9 cm) in length, that is, from the tip of the spire to the distal end of the shell, or 3/8 inch (9.5 mm) in lip width at its widest point.

* * * * *

[FR Doc. 2016–11064 Filed 5–10–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 91
Wednesday, May 11, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Parts 217, 249, and 252

[Regulations Q, WW, and YY; Docket No. R–1538]

RIN 7100 AE–52

Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is inviting comment on a proposed rule to promote U.S. financial stability by improving the resolvability and resilience of systemically important U.S. banking organizations and systemically important foreign banking organizations pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Under the proposed rule, any U.S. top-tier bank holding company identified by the Board as a global systemically important banking organization (GSIB), the subsidiaries of any U.S. GSIB (other than national banks and federal savings associations), and the U.S. operations of any foreign GSIB (other than national banks and federal savings associations) would be subjected to restrictions regarding the terms of their non-cleared qualified financial contracts (QFCs). First, a covered entity would generally be required to ensure that QFCs to which it is party, including QFCs entered into outside the United States, provide that any default rights and restrictions on the transfer of the QFCs are limited to the same extent as they would be under the Dodd-Frank Act and the Federal Deposit Insurance Act. Second, a covered entity would generally be prohibited from being party to QFCs that would allow a QFC counterparty to exercise default rights against the covered entity based on the entry into a resolution proceeding under the Dodd-Frank Act, Federal Deposit Insurance Act, or any other resolution proceeding of an affiliate of the covered entity. The proposal would also amend certain definitions in the Board's capital and liquidity rules; these amendments are intended to ensure that the regulatory capital and liquidity treatment of QFCs to which a covered entity is party is not affected by the proposed restrictions on such QFCs. The Office of the Comptroller of the Currency is expected to issue a proposed rule that would subject national banks and federal savings associations that are GSIB subsidiaries to requirements substantively identical to those proposed here.

DATES: Comments should be received by August 5, 2016.

ADDRESSES: You may submit comments, identified by Docket No. R–1538 and RIN No. 7100 AE–52, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Felton Booker, Senior Supervisory Financial Analyst, (202) 912–4651, or Mark Savignac, Supervisory Financial Analyst, (202) 475–7606, Division of Banking Supervision and Regulation; or Will Giles, Counsel, (202) 452–3351, or Lucy Chang, Attorney, (202) 475–6331, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Background

This proposed rule, which is part of a set of actions by the Board to address the "too-big-to-fail" problem, addresses one of the ways in which the failure of a major financial firm can destabilize the financial system. The failure of a large, interconnected financial company could cause severe damage to the U.S. financial system and, ultimately, to the economy as a whole, as illustrated by the failure of Lehman Brothers in September 2008. Protecting the financial stability of the United States by helping to address this too-big-to-fail problem is a core objective of the Dodd-Frank Wall Street Reform and Consumer Protection

Act (Dodd-Frank Act),[1] which Congress passed in response to the 2007–2009 financial crisis and the ensuing recession. The Dodd-Frank Act and the actions that U.S. financial regulators have taken to implement it and to otherwise protect U.S. financial stability help to address the too-big-to-fail problem in two ways: by reducing the probability that a systemically important financial company will fail, and by reducing the damage that such a company's failure would do if it were to occur. The second of these strategies centers on measures designed to help ensure that a failed company's passage through a resolution proceeding—such as bankruptcy or the special resolution process created by the Dodd-Frank Act—would be more orderly, thereby helping to mitigate destabilizing effects on the rest of the financial system.[2]

This proposed rule is intended as a further step to increase the resolvability of U.S. global systemically important banking organizations (GSIBs) and foreign GSIBs that operate in the United States. The proposal complements the Board's recent notice of proposed rulemaking on total loss-absorbing capacity, long-term debt, and clean holding company requirements for GSIBs (TLAC proposal)[3] and the ongoing work of the Board and the FDIC on resolution planning requirements for GSIBs. The current proposal focuses on improving the orderly resolution of a GSIB by limiting disruptions to a failed GSIB through its financial contracts with other companies.

The largest financial firms are interconnected with other financial firms through large volumes of financial contracts of various types, including derivatives transactions. The failure of one entity within a large financial firm can trigger disruptive terminations of these contracts, as the counterparties of both the failed entity and other entities within the same firm exercise their contractual rights to terminate the contracts and liquidate collateral. These terminations, especially if counterparties lose confidence in the GSIB quickly and in large numbers, can destabilize the financial system and potentially spark a financial crisis through several channels. They can destabilize the failed entity's otherwise solvent affiliates, causing them to fail and thereby potentially causing their counterparties to fail in a chain reaction that can ripple through the system. They also may result in firesales of large volumes of financial assets, such as the collateral that secures the contracts, which can in turn weaken and cause stress for other firms by lowering the value of similar assets that they hold.

For example, the triggering of default rights by counterparties of Lehman Brothers in 2008 was a key driver of its destabilization that resulted from its failure.[4] At the time of its failure, Lehman was party to very large volumes of financial contracts, including over-the-counter derivatives contracts.[5] When its holding company declared bankruptcy, Lehman's counterparties exercised their default rights.[6] Lehman's default "caused disruptions in the swaps and derivatives markets and a rapid, market-wide unwinding of trading positions."[7] Meanwhile, "out-of-the-money counterparties, which owed Lehman money, typically chose not to terminate their contracts" and instead suspended payment, reducing the liquidity available to the bankruptcy estate.[8] The complexity and disruption associated with Lehman's portfolios of financial contracts led to a disorderly resolution of Lehman.[9] This proposal is meant to help avoid a repeat of the systemic disruptions caused by the Lehman failure by preventing the exercise of default rights in financial contracts from leading to such disorderly and destabilizing failures in the future.

This proposal is intended to respond to the threat to financial stability posed by such default rights in two ways. First, the proposal reduces the risk that courts in foreign jurisdictions would disregard statutory provisions that would stay the rights of a failed firm's counterparties to terminate their contracts when the firm enters a resolution proceeding under one of the special resolution frameworks for failed financial firms created by Congress under the Federal Deposit Insurance Act (FDI Act) and the Dodd-Frank Act. Second, the proposal would facilitate the resolution of a large financial entity under the U.S. Bankruptcy Code and other resolution frameworks by ensuring that the counterparties of solvent affiliates of the failed entity could not unravel their contracts with the solvent affiliate based solely on the failed entity's resolution.

Qualified financial contracts, default rights, and financial stability. In particular, this proposal pertains to several important classes of financial transactions that are collectively known as "qualified financial contracts" (QFCs).[10] QFCs include derivatives, repurchase agreements (also known as "repos") and reverse repos, and securities lending and borrowing agreements.[11] GSIBs enter into QFCs for a variety of purposes, including to borrow money to finance their investments, to lend money, to manage risk, and to enable their clients and counterparties to hedge risks, make markets in securities and derivatives, and take positions in financial investments.

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[1] The Dodd-Frank Act was enacted on July 21, 2010 (Pub. L. 111–203). According to its preamble, the Dodd-Frank Act is intended "[t]o promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', [and] to protect the American taxpayer by ending bailouts."

[2] The Dodd-Frank Act itself pursues this goal through numerous provisions, including by requiring systemically important financial companies to develop resolution plans (also known as "living wills") that lay out how they could be resolved in an orderly manner if they were to fail and by creating a new resolution regime, the Orderly Liquidation Authority, applicable to systemically important financial companies. 12 U.S.C. 5365(d), 5381–5394. Moreover, section 165 of the Dodd-Frank Act directs the Board to promote financial stability through regulation by subjecting large bank holding companies and nonbank financial companies designated for Board supervision to enhanced prudential standards "[i]n order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions." 12 U.S.C. 5365(a)(1).

[3] 80 FR 74926 (Nov. 30, 2015). For further high-level background on post-crisis regulatory reforms aimed at addressing the too-big-to-fail problem, see the preamble to the TLAC proposal. *Id.* at 74926–74928.

[4] *See* "The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act" 3, FDIC Quarterly (2011) ("The Lehman bankruptcy had an immediate and negative effect on U.S. financial stability and has proven to be a disorderly, time-consuming, and expensive process."), available at *https://www.fdic.gov/bank/analytical/quarterly/2011_vol5_2/lehman.pdf.*

[5] *See* Michael J. Fleming and Asani Sarkar, "The Failure Resolution of Lehman Brothers," FRBNY Economic Policy Review 185 (December 2014), available at *https://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412flem.pdf.*

[6] *See id.*

[7] "The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act" 3, FDIC Quarterly (2011), available at *https://www.fdic.gov/bank/analytical/quarterly/2011_vol5_2/lehman.pdf.*

[8] Michael J. Fleming and Asani Sarkar, "The Failure Resolution of Lehman Brothers," FRBNY Economic Policy Review 185 (December 2014), available at *https://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412flem.pdf.*

[9] *See* Mark J. Roe and Stephen D. Adams, "Restructuring Failed Financial Firms in Bankruptcy: Selling Lehman's Derivatives Portfolio," Yale Journal on Regulation (2015) ("Lehman's failure exacerbated the financial crisis, especially after AIG's collapse in the days afterwards prompted counterparties to close out positions, sell collateral, and thereby depress and freeze markets. Many financial players stopped trading for fear that their counterparty would be the next Lehman or that their counterparty had large unseen exposures to Lehman that would make the counterparty itself fail. Such was the case with the Reserve Primary Fund, a money market fund that held too many defaulting obligations of Lehman. That reaction led to a further panic, a threat of a run on money market funds, and a government guarantee of all money market funds to stem the ongoing financial degradation throughout the economy.").

[10] The proposal would adopt the definition of "qualified financial contract" set out in section 210(c)(8)(D) of the Dodd-Frank Act, 12 U.S.C. 5390(c)(8)(D). *See* proposed rule § 252.81.

[11] The definition of "qualified financial contract" is broader than this list of examples, and the default rights discussed are not common to all types of QFC.

QFCs play a role in economically valuable financial intermediation when markets are functioning normally. But they are also a major source of financial interconnectedness, which can pose a threat to financial stability in times of market stress. This proposal focuses on a context in which that threat is especially great: the failure of a GSIB that is party to large volumes of QFCs, likely including QFCs with counterparties that are themselves systemically important.

By contract, a party to a QFC generally has the right to take certain actions if its counterparty defaults on the QFC (that is, if it fails to meet certain contractual obligations). Common default rights include the right to suspend performance of the non-defaulting party's obligations, the right to terminate or accelerate the contract, the right to set off amounts owed between the parties, and the right to seize and liquidate the defaulting party's collateral. In general, default rights allow a party to a QFC to reduce the credit risk associated with the QFC by granting it the right to exit the QFC and thereby reduce its exposure to its counterparty upon the occurrence of a specified condition, such as its counterparty's entry into a resolution proceeding.

Where the defaulting party is a GSIB entity, the private benefit of allowing counterparties of GSIBs to take certain actions must be weighed against the harm that these actions cause by encouraging the disorderly failure of a GSIB and increasing the threat to the stability of the U.S. financial system as a whole. For example, if a significant number of QFC counterparties exercise their default rights precipitously and in a manner that would impede an orderly resolution of a GSIB, all QFC counterparties and the financial system may potentially be worse off and less stable.

This may occur through several channels. First, the exits may drain liquidity from a troubled GSIB, forcing the GSIB to rapidly sell off assets at depressed prices, both because the sales must be done within a short timeframe and because the elevated supply may push prices down. These asset firesales may cause or deepen balance-sheet insolvency at the GSIB, causing a GSIB to fail more suddenly and reducing the amount that its other creditors can recover, thereby imposing losses on those creditors and threatening their solvency. The GSIB may also respond to a QFC run by withdrawing liquidity that it had offered to other firms, forcing them to engage in firesales. Alternatively, if the GSIB's QFC counterparty itself liquidates the QFC collateral at firesale prices, the effect will again be to weaken the GSIB's balance sheet.[12] The counterparty's rights to set off amounts owed, terminate the contract, and suspend payments may allow it to further drain the GSIB's capital and liquidity by withholding payments that it would otherwise owe to the GSIB. The GSIB may also have rehypothecated collateral that it received from QFC counterparties, for instance in repo or securities lending transactions that fund other client arrangements, in which case demands from those counterparties for the early return of their rehypothecated collateral could be especially disruptive.[13]

The asset firesales discussed above can also spread contagion throughout the financial system by increasing volatility and by lowering the value of similar assets held by other firms, potentially causing these firms to suffer mark-to-market losses, diminished market confidence in their own solvency, margin calls, and creditor runs (which could lead to further firesales, worsening the contagion). Finally, the early terminations of derivatives that the surviving entities of the failed GSIB relied on to hedge their risks could leave those entities with major risks unhedged, increasing the entities' potential losses going forward.

Where there are significant simultaneous terminations and these effects occur contemporaneously, such as upon the failure of a GSIB that is party to a large volume of QFCs, they may pose a substantial risk to financial stability. In short, QFC continuity is important for the orderly resolution of a GSIB because it helps to ensure that the GSIB entities remain viable and to avoid instability caused by asset firesales.

Consequently, the Board and the Federal Deposit Insurance Corporation (FDIC) have identified the exercise of certain default rights in financial contracts as a potential obstacle to orderly resolution in the context of resolution plans filed pursuant to section 165(d) of the Dodd-Frank Act,[14] and have instructed the most systemically important firms to demonstrate that they are "amending, on an industry-wide and firm-specific basis, financial contracts to provide for a stay of certain early termination rights of external counterparties triggered by insolvency proceedings." [15]

Direct defaults and cross-defaults. This proposal focuses on two distinct scenarios in which a non-defaulting party to a QFC is commonly able to exercise the rights described above. These two scenarios involve a default that occurs when either the GSIB legal entity that is a direct party [16] to the QFC or an affiliate of that legal entity enters a resolution proceeding.[17] The first scenario occurs when a GSIB entity that is itself a direct party to the QFC enters a resolution proceeding; this preamble refers to such a scenario as a "direct default" and refers to the default rights that arise from a direct default as "direct default rights." The second scenario occurs when an affiliate of the GSIB entity that is a direct party to the QFC (such as the direct party's parent holding company) enters a resolution proceeding; this preamble refers to such a scenario as a "cross-default" and refers to default rights that arise from a cross-default as "cross-default rights." For example, a GSIB parent entity might guarantee the derivatives transactions of its subsidiaries and those derivatives contracts could contain cross-default rights against a subsidiary of the GSIB that would be triggered by the bankruptcy filing of the GSIB parent entity even though the subsidiary continues to meet all of its financial obligations.[18]

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[12] *See* "The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act" 8, FDIC Quarterly (2011), available at *https://www.fdic.gov/bank/analytical/quarterly/2011_vol5_2/lehman.pdf* ("A disorderly unwinding of [qualified financial contracts] triggered by an event of insolvency, as each counterparty races to unwind and cover unhedged positions, can cause a tremendous loss of value, especially if lightly traded collateral covering a trade is sold into an artificially depressed, unstable market. Such disorderly unwinding can have severe negative consequences for the financial company, its creditors, its counterparties, and the financial stability of the United States.").

[13] *See generally* Adam Kirk, James McAndrews, Parinitha Sastry, and Phillip Weed, "Matching Collateral Supply and Financing Demands in Dealer Banks," FRBNY Economic Policy Review 127 (December 2014), available at *http://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412kirk.pdf*.

[14] 12 U.S.C. 5365(d).

[15] Board and FDIC, "Agencies Provide Feedback on Second Round Resolution Plans of 'First-Wave' Filers" (August 5, 2014), available at *http://www.federalreserve.gov/newsevents/press/bcreg/20140805a.htm. See also* Board and FDIC, "Agencies Provide Feedback on Resolution Plans of Three Foreign Banking Organizations" (March 23, 2015), available at *http://www.federalreserve.gov/newsevents/press/bcreg/20150323a.htm;* Board and FDIC, "Guidance for 2013 165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Initial Resolution Plans in 2012" 5–6 (April 15, 2013), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20130415c2.pdf*.

[16] In general, a "direct party" refers to a party to a financial contract other than a credit enhancement (such as a guarantee). The definition of "direct party" and related definitions are discussed in more detail below on page 38.

[17] This preamble uses phrases such as "entering a resolution proceeding" and "going into resolution" to encompass the concept of "becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding." These phrases refer to proceedings established by law to deal with a failed legal entity. In the context of the failure of a systemically important banking organization, the most relevant types of resolution proceeding include the following: for most U.S.-based legal entities, the bankruptcy process established by the U.S. Bankruptcy Code (Title 11, United States Code); for U.S. insured depository institutions, a receivership administered by the Federal Deposit Insurance Corporation (FDIC) under the Federal Deposit Insurance Act (12 U.S.C. 1821); for companies whose "resolution under otherwise applicable Federal or State law would have serious adverse effects on the financial stability of the United States," the Dodd-Frank Act's Orderly Liquidation Authority (12 U.S.C. 5383(b)(2)); and, for entities based outside the United States, resolution proceedings created by foreign law.

Importantly, this proposal does not affect all types of default rights, and, where it affects a default right, the proposal does so only temporarily for the purpose of allowing the relevant resolution authority to take action to continue to provide for continued performance on the QFC. Moreover, the proposal is concerned only with default rights that run *against* a GSIB—that is, direct default rights and cross-default rights that arise from the entry into resolution of a GSIB entity. The proposal would not affect default rights that a GSIB entity (or any other entity) may have against a counterparty that is not a GSIB entity. This limited scope is appropriate because, as described above, the risk posed to financial stability by the exercise of QFC default rights is greatest when the defaulting counterparty is a GSIB entity.

Single-point-of-entry resolution. Cross-default rights are especially significant in the context of a GSIB failure because GSIBs typically enter into large volumes of QFCs through different entities controlled by the GSIB. For example, a U.S. GSIB is made up of a U.S. bank holding company and numerous operating subsidiaries that are owned, directly or indirectly, by the bank holding company. From the standpoint of financial stability, the most important of these operating subsidiaries are generally a U.S. insured depository institution, a U.S. broker-dealer, and similar entities organized in other countries.

Many complex GSIB have developed resolution strategies that rely on the single-point-of-entry (SPOE) resolution strategy. In an SPOE resolution of a GSIB, only a single legal entity—the GSIB's top-tier bank holding company—would enter a resolution proceeding. The losses that led to the GSIB's failure would be passed up from the operating subsidiaries that incurred the losses to the holding company and would then be imposed on the equity holders and unsecured creditors of the holding company through the resolution process.[19] This strategy is designed to help ensure that the GSIB subsidiaries remain adequately capitalized, and that operating subsidiaries of the GSIB are able to continue to meet their financial obligations without defaulting or entering resolution themselves. The expectation that the holding company's equity holders and unsecured creditors would absorb the GSIB's losses in the event of failure would help to maintain the confidence of the operating subsidiaries' creditors and counterparties (including their QFC counterparties), reducing their incentive to engage in potentially destabilizing funding runs or margin calls and thus lowering the risk of asset firesales. A successful SPOE resolution would also avoid the need for separate resolution proceedings for separate legal entities run by separate authorities across multiple jurisdictions, which would be more complex and could therefore destabilize the resolution.

The Board's TLAC proposal is intended to help, though not exclusively, to lay the foundation necessary for the SPOE resolution of a GSIB by requiring the top-tier holding companies of U.S. GSIBs and the U.S. intermediate holding companies of foreign GSIBs to maintain loss-absorbing capacity that could be used for resolution and to adopt a "clean holding company" structure, under which certain financial activities that could pose obstacles to orderly resolution would be off-limits to the holding company and could only be conducted by its operating subsidiaries.[20]

Other orderly resolution strategies. This proposal would also yield benefits for other approaches to resolution. For example, preventing early terminations of QFCs would increase the prospects for an orderly resolution under a multiple-point-of-entry (MPOE) strategy involving a foreign GSIB's U.S. intermediate holding company going into resolution or a resolution plan that calls for a GSIB's U.S. insured depository institution to enter resolution under the Federal Deposit Insurance Act. As discussed above, this proposal would help support the continued operation of affiliates of an entity experiencing resolution to the extent the affiliate continues to perform on its QFCs.

U.S. Bankruptcy Code. When an entity goes into resolution under the Bankruptcy Code, attempts by the debtor entity's creditors to enforce their debts through any means other than participation in the bankruptcy proceeding (for instance, by suing in another court, seeking enforcement of a preexisting judgment, or seizing and liquidating collateral) are generally blocked by the imposition of an automatic stay.[21] A key purpose of the automatic stay, and of bankruptcy law in general, is to maximize the value of the bankruptcy estate and the creditors' ultimate recoveries by facilitating an orderly liquidation or restructuring of the debtor. The automatic stay thus solves a collective action problem in which the creditors' individual incentives to become the first to recover as much from the debtor as possible, before other creditors can do so, collectively cause a value-destroying disorderly liquidation of the debtor.[22]

However, the Bankruptcy Code largely exempts QFC[23] counterparties from the automatic stay through special "safe harbor" provisions.[24] Under these provisions, any rights that a QFC counterparty has to terminate the contract, set off obligations, and liquidate collateral in response to a direct default are not subject to the stay and may be exercised against the debtor immediately upon default. (The Bankruptcy Code does not itself confer default rights upon QFC counterparties; it merely permits QFC counterparties to exercise certain rights created by other sources, such as contractual rights created by the terms of the QFC.)

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[18] *See* Michael J. Fleming and Asani Sarkar, "The Failure Resolution of Lehman Brothers," FRBNY Economic Policy Review 185 (December 2014), available at *https://www.newyorkfed.org/medialibrary/media/research/epr/2014/1412flem.pdf.*

[19] The Board's TLAC proposal would address the need for adequate external loss-absorbing capacity at the holding company level by requiring the top-tier holding companies of the U.S. GSIBs and the U.S. intermediate holding companies of foreign GSIBs to maintain outstanding required levels of unsecured long-term debt and TLAC, which is defined to include both tier 1 capital and eligible long-term debt. *See* 80 FR 74926, 74931–74944. The TLAC proposal also discussed, but did not propose, a potential framework for internal loss-absorbing capacity that could be used to transfer losses from the operating subsidiaries that incur them to the top-tier holding company. *See* 80 FR 74926, 74948–74949.

[20] *See* 80 FR 74926, 74944–74948.

[21] *See* 11 U.S.C. 362.

[22] *See, e.g., Aiello* v. *Providian Financial Corp.*, 239 F.3d 876, 879 (7th Cir. 2001).

[23] The Bankruptcy Code does not use the term "qualified financial contract," but the set of transactions covered by its safe harbor provisions closely tracks the set of transactions that fall within the definition of "qualified financial contract" used in Title II of the Dodd-Frank Act and in this proposal.

[24] 11 U.S.C. 362(b)(6), (7), (17), (27), 362(o), 555, 556, 559, 560, 561. The Bankruptcy Code specifies the types of parties to which the safe harbor provisions apply, such as financial institutions and financial participants. *Id.*

The Bankruptcy Code's automatic stay also does not prevent the exercise of cross-default rights against an affiliate of the party entering resolution. The stay generally applies only to actions taken against the party entering resolution or the bankruptcy estate,[25] whereas a QFC counterparty exercising a cross-default right is instead acting against a distinct legal entity that is not itself in resolution: The debtor's affiliate.

Title II of the Dodd-Frank Act and the Orderly Liquidation Authority. Title II of the Dodd-Frank Act imposes somewhat broader stay requirements on QFCs that enter resolution under that Title. In general, no financial firm (regardless of size) is too-big-to-fail and a U.S. bank holding company (such as the top-tier holding company of a U.S. GSIB) that fails would be resolved under the Bankruptcy Code. Congress recognized, however, that a financial company might fail under extraordinary circumstances in which an attempt to resolve it through the bankruptcy process would have serious adverse effects on financial stability in the United States. Title II of the Dodd-Frank Act establishes the Orderly Liquidation Authority (OLA), an alternative resolution framework intended to be used rarely to manage the failure of a firm that poses a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard.[26] Title II authorizes the Secretary of the Treasury, upon the recommendation of other government agencies and a determination that several preconditions are met, to place a financial company into a receivership conducted by the FDIC as an alternative to bankruptcy.[27]

Title II empowers the FDIC to transfer the QFCs to a bridge financial company or some other financial company that is not in a resolution proceeding and should therefore be capable of performing under the QFCs.[28] To give the FDIC time to effect this transfer, Title II temporarily stays QFC counterparties of the failed entity from exercising termination, netting, and collateral liquidation rights "solely by reason of or incidental to" the failed entity's entry into OLA resolution, its insolvency, or its financial condition.[29] Once the QFCs are transferred in accordance with the statute, Title II permanently stays the exercise of default rights for those reasons.[30]

Title II addresses cross-default rights through a similar procedure. It empowers the FDIC to enforce contracts of subsidiaries or affiliates of the failed covered financial company that are "guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of" the failed company, so long as the FDIC takes certain steps to protect the QFC counterparties' interests by the end of the business day following the company's entry into OLA resolution.[31]

These stay-and-transfer provisions of the Dodd-Frank Act are intended to mitigate the threat posed by QFC default rights. At the same time, the provisions allow for appropriate protections for QFC counterparties of the failed financial company. The provisions stay only the exercise of default rights based on the failed company's entry into resolution, the fact of its insolvency, or its financial condition. And the stay period is brief, unless the FDIC transfers the QFCs to another financial company that is not in resolution (and should therefore be capable of performing under the QFCs) or, if applicable, provides adequate protection that the QFCs will be performed.

The Federal Deposit Insurance Act. Under the FDI Act, a failing insured depository institution would generally enter a receivership administered by the FDIC.[32] The FDI Act addresses direct default rights in the failed bank's QFCs with stay-and-transfer provisions that are substantially similar to the provisions of Title II of the Dodd-Frank Act discussed above.[33] However, the FDI Act does not address cross-default rights, leaving the QFC counterparties of the failed depository institution's affiliates free to exercise any contractual rights they may have to terminate, net, and liquidate collateral based on the depository institution's entry into resolution. Moreover, as with Title II of the Dodd-Frank Act, there is a possibility that a court of a foreign jurisdiction might decline to enforce the FDI Act's stay-and-transfer provisions under certain circumstances.

B. Overview of the Proposal

The Board invites comment on all aspects of this proposed rulemaking, which is intended to increase GSIB resolvability by addressing two QFC-related issues. First, the proposal seeks to address the risk that a court in a foreign jurisdiction may decline to enforce the QFC stay-and-transfer provisions of Title II and the FDI Act discussed above. Second, the proposal seeks to address the potential disruption that may occur if a counterparty to a QFC with an affiliate of a GSIB entity that goes into resolution under the Bankruptcy Code or the FDI Act is provided cross-default rights.

Scope of application. The proposal's requirements would apply to all "covered entities." "Covered entity" would include: Any U.S. top-tier bank holding company identified as a GSIB under the Board's rule establishing risk-based capital surcharges for GSIBs (GSIB surcharge rule);[34] any subsidiary of such a bank holding company; and any U.S. subsidiary, U.S. branch, or U.S. agency of a foreign GSIB. Covered entity would not include certain entities that are supervised by the Office of the Comptroller of the Currency (OCC) (covered bank). The OCC is expected to issue a proposed rule that would subject covered banks to requirements substantively identical to those proposed here for covered entities.

"Qualified financial contract" or "QFC" would be defined to have the same meaning as in section 210(c)(8)(D) of the Dodd-Frank Act,[35] and would include, among other things, derivatives, repos, and securities lending agreements. Subject to the exceptions discussed below, the proposal's requirements would apply to any QFC to which a covered entity is party (covered QFC).

Required contractual provisions related to the U.S. special resolution regimes. Covered entities would be required to ensure that covered QFCs include contractual terms explicitly providing that any default rights or restrictions on the transfer of the QFC are limited to the same extent as they would be pursuant to the U.S. special resolution regimes—that is, the OLA and the FDI Act.[36] The proposed requirements are not intended to imply that the statutory stay-and-transfer provisions would not in fact apply to a given QFC, but rather to help ensure that all covered QFCs—including QFCs that are governed by foreign law, entered into with a foreign party, or for which collateral is held outside the United States—would be treated the same way in the context of an FDIC receivership under the Dodd-Frank Act or the FDI Act. This provision would address the first issue listed above and would decrease the QFC-related threat to financial stability posed by the failure and resolution of an internationally active GSIB. This section of the proposal is also consistent with analogous legal requirements that have been imposed in other national jurisdictions[37] and with the Financial Stability Board's "Principles for Cross-border Effectiveness of Resolution Actions."[38]

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[25] *See* 11 U.S.C. 362(a).

[26] Section 204(a) of the Dodd-Frank Act, 12 U.S.C. 5384(a).

[27] *See* section 203 of the Dodd-Frank Act, 12 U.S.C. 5383.

[28] *See* 12 U.S.C. 5390(c)(9).

[29] 12 U.S.C. 5390(c)(10)(B)(i)(I). This temporary stay generally lasts until 5:00 p.m. eastern time on the business day following the appointment of the FDIC as receiver.

[30] 12 U.S.C. 5390(c)(10)(B)(i)(II).

[31] 12 U.S.C. 5390(c)(16).

[32] 12 U.S.C. 1821(c).

[33] *See* 12 U.S.C. 1821(e)(8)–(10).

[34] 12 CFR 217.402; 80 FR 49106 (August 14, 2015). *See* proposed rule § 252.81.

[35] 12 U.S.C. 5390(c)(8)(D). *See* proposed rule § 252.81.

Prohibited cross-default rights. A covered entity would be prohibited from entering into covered QFCs that would allow the exercise of cross-default rights—that is, default rights related, directly or indirectly, to the entry into resolution of an affiliate of the direct party—against it.[39] Covered entities would similarly be prohibited from entering into covered QFCs that would provide for a restriction on the transfer of a credit enhancement supporting the QFC from the covered entity's affiliate to a transferee upon the entry into resolution of the affiliate.

The Board does not propose to prohibit covered entities from entering into QFCs that contain direct default rights. Under the proposal, a counterparty to a direct QFC with a covered entity also could, to the extent not inconsistent with Title II or the FDI Act, be granted and could exercise the right to terminate the QFC if the covered entity fails to perform its obligations under the QFC.

As an alternative to bringing their covered QFCs into compliance with the requirements set out in this section of the proposed rule, covered entities would be permitted to comply by adhering to the ISDA 2015 Resolution Stay Protocol.[40] The Board views the ISDA 2015 Resolution Stay Protocol as consistent with the requirements of the proposed rule.

The purpose of this section of the proposal is to help ensure that, when a GSIB entity enters resolution under the Bankruptcy Code or the FDI Act,[41] its affiliates' covered QFCs will be protected from disruption to a similar extent as if the failed entity had entered resolution under the OLA. In particular, this section would facilitate resolution under the Bankruptcy Code by preventing the QFC counterparties of a GSIB's operating subsidiary from exercising default rights on the basis of the entry into bankruptcy by the GSIB's top-tier holding company or any other affiliate of the operating subsidiary. This section generally would not prevent covered QFCs from allowing the exercise of default rights upon a failure by the direct party to satisfy a payment or delivery obligation under the QFC, the direct party's entry into resolution, or the occurrence of any other default event that is not related to the entry into a resolution proceeding or the financial condition of an affiliate of the direct party.

Process for approval of enhanced creditor protection conditions. The proposal would allow the Board, at the request of a covered entity, to approve as compliant with the proposal covered QFCs with creditor protections other than those that would otherwise be permitted under section 252.84 of the proposal.[42] The Board could approve such a request if, in light of several enumerated considerations,[43] the alternative approach would mitigate risks to the financial stability of the United States presented by a GSIB's failure to at least the same extent as the proposed requirements.

Amendments to certain definitions in the Board's capital and liquidity rules. The proposal would also amend certain definitions in the Board's capital and liquidity rules to help ensure that the regulatory capital and liquidity treatment of QFCs to which a covered entity is party is not affected by the proposed restrictions on such QFCs. Specifically, the proposal would amend the definition of "qualifying master netting agreement" in the Board's regulatory capital and liquidity rules and would similarly amend the definitions of the terms "collateral agreement," "eligible margin loan," and "repo-style transaction" in the Board's regulatory capital rules.

C. Consultation With U.S Financial Regulators, the Council, and Foreign Authorities

In developing this proposal, the Board consulted with the FDIC, the OCC, the Financial Stability Oversight Council (Council), and other U.S. financial regulators. The proposal reflects input that the Board received during this consultation process. The Board also intends to consult with the Council and other U.S. financial regulators after it reviews comments on the proposal. Furthermore, the Board has consulted with, and expects to continue to consult with, foreign financial regulatory authorities regarding this proposal and the establishment of other standards that would maximize the prospects for the cooperative and orderly cross-border resolution of a failed GSIB on an international basis.

The OCC is expected to issue for public comment a notice of proposed rulemaking that would subject covered banks, including the national bank subsidiaries of GSIBs, to requirements substantively identical to those proposed here for covered entities. The Board and the OCC coordinated the development of their respective proposals in order to avoid redundancy.

D. Overview of Statutory Authority

The Board is issuing this proposal under the authority provided by section 165 of the Dodd-Frank Act.[44] Section 165 instructs the Board to impose enhanced prudential standards on bank holding companies with total consolidated assets of $50 billion or more "[i]n order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions."[45] These enhanced prudential standards must increase in stringency based on the systemic footprint and risk characteristics of covered firms.[46] Section 165 requires the Board to impose enhanced prudential standards of several specified types and also authorizes the Board to establish "such other prudential standards as the Board of Governors, on its own or pursuant to a recommendation made by the Council, determines are appropriate." [47]

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[36] *See* proposed rule § 252.83.

[37] *See, e.g.,* Bank of England Prudential Regulation Authority, Policy Statement, "Contractual stays in financial contracts governed by third-country law" (November 2015), available at *http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2515.pdf.*

[38] Financial Stability Board, "Principles for Cross-border Effectiveness of Resolution Actions" (November 3, 2015), available at *http://www.fsb.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf.*

The Financial Stability Board (FSB) was established in 2009 to coordinate the work of national financial authorities and international standard-setting bodies and to develop and promote the implementation of effective regulatory, supervisory, and other financial sector policies to advance financial stability. The FSB brings together national authorities responsible for financial stability in 24 countries and jurisdictions, as well as international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts. *See generally* Financial Stability Board, available at *http://www.fsb.org.*

[39] *See* proposed rule § 252.83(b).

[40] *See* proposed rule § 252.85(a).

[41] The FDI Act does not stay cross-default rights against affiliates of an insured depository institution based on the entry of the insured depository institution into resolution proceedings under the FDI Act.

[42] *See* proposed rule § 252.85.

[43] *See* proposed rule § 252.85(c).

[44] 12 U.S.C. 5365.

[45] 12 U.S.C. 5365(a)(1).

Enhanced prudential standards in the proposal are intended to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of a GSIB. In particular, the proposed requirements would improve the resolvability of U.S. GSIBs under the Bankruptcy Code, Title II of the Dodd-Frank Act, or, with reference to insured depository institutions that are GSIB subsidiaries, the FDI Act, and reduce the potential that resolution of the firm will be disorderly and lead to disruptive asset sales and liquidations.

The proposal would also improve the resilience of the U.S. operations of foreign GSIBs, and thereby increase the likelihood that a failed foreign GSIB with U.S. operations would be successfully resolved by its home jurisdiction authorities without the failure of the foreign GSIB's U.S. operating entities and with limited effect on the financial stability of the United States.

The Board has tailored this proposal to apply only to those banking organizations whose disorderly failure would likely pose the greatest risk to U.S. financial stability: The U.S. GSIBs and the U.S. operations of foreign GSIBs.

Question 1: The Board invites comment on all aspects of this section.

II. Proposed Restrictions on QFCs of GSIBs

A. Covered Entities (Section 252.82(a) of the Proposed Rule)

The proposed rule would apply to "covered entities," which include (a) any U.S. GSIB top-tier bank holding company, (b) any subsidiary of such a bank holding company that is not a "covered bank," and (c) the U.S. operations of any foreign GSIB with the exception of any "covered bank." The term "covered bank" would be defined to include certain entities, such as certain national banks, that are supervised by the OCC. While covered banks would be exempt from the requirements of this proposal, the OCC is expected to issue a proposed rule that would impose substantively identical requirements for covered banks in the near future.[48]

U.S. GSIB bank holding companies. Covered entities would include the entities identified as U.S. GSIB top-tier holding companies under the Board's GSIB surcharge rule.[49] Under the GSIB surcharge rule, a U.S. top-tier bank holding company subject to the advanced approaches rule must determine whether it is a GSIB by applying a multifactor methodology established by the Board.[50] The methodology evaluates a banking organization's systemic importance on the basis of its attributes in five broad categories: Size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity.

Accordingly, the methodology provides a tool for identifying those banking organizations whose failure or material distress would pose especially large risks to the financial stability of the United States. Improving the orderly resolution and resolvability of such firms, including by reducing risks associated with their QFCs, would be an important step toward achieving the goals of the Dodd-Frank Act. The proposal's focus on GSIBs is also in keeping with the Dodd-Frank Act's mandate that more stringent prudential standards be applied to the most systemically important bank holding companies.[51] Moreover, several of the attributes that feed into the determination of whether a given firm is a GSIB incorporate aspects of the firm's QFC activity. These attributes include the firm's total exposures, its intra-financial system assets and liabilities, its notional amount of over-the-counter derivatives, and its cross-jurisdictional claims and liabilities.

Under the GSIB surcharge rule's methodology, there are currently eight U.S. GSIBs: Bank of America Corporation, The Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JPMorgan Chase & Co., Morgan Stanley Inc., State Street Corporation, and Wells Fargo & Company. This list may change in the future in light of changes to the relevant attributes of the current U.S. GSIBs and of other large U.S. bank holding companies.

U.S. GSIB subsidiaries. Covered entities would also include all subsidiaries of the U.S. GSIBs (other than covered banks).[52] U.S. GSIBs generally enter into QFCs through subsidiary legal entities rather than through the top-tier holding company.[53] Therefore, in order to increase GSIB resolvability by addressing the potential obstacles to orderly resolution posed by QFCs, it is necessary to apply the proposed restrictions to the U.S. GSIBs' subsidiaries.

In particular, to facilitate the resolution of a GSIB under an SPOE strategy, in which only the top-tier holding company would enter a resolution proceeding while its subsidiaries would continue to meet their financial obligations, or an MPOE strategy where an affiliate of an entity that is otherwise performing under a QFC enters resolution, it is necessary to ensure that those subsidiaries or affiliates do not enter into QFCs that contain cross-default rights that the counterparty could exercise based on the holding company's or affiliate's entry into resolution (or that any such cross-default rights are stayed when the holding company enters resolution). Moreover, including U.S. and non-U.S. entities of a U.S. GSIB as covered entities should help ensure that such cross-default rights do not affect the ability of performing and solvent entities of a GSIB—regardless of jurisdiction—to remain outside of resolution proceedings.

U.S. operations of foreign GSIBs. Finally, covered entities would include all U.S. operations of foreign GSIBs that are not covered banks, including U.S. subsidiaries, U.S. branches, and U.S. agencies. Under the proposal, the term "global systemically important foreign banking organization" (which this preamble will shorten to "foreign GSIB") would be defined to include any foreign banking organization that (a) would be designated as a GSIB under the Board's GSIB surcharge rule if it were subject to that rule on a consolidated basis or (b) would be designated as a GSIB under the methodology for identifying GSIBs adopted by the Basel Committee on

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[46] 12 U.S.C. 5365(a)(1)(B), (b)(3)(A)–(D).

[47] 12 U.S.C. 5365(b)(1)(B)(iv).

[48] Section 252.88 of the Board's proposal also clarifies that covered entities are not required to conform covered QFCs with respect to a part of a covered QFC that a covered bank also would be required to conform under the proposed rule that the OCC is expected to issue. Such overlap could occur, for example, where a bank holding company that is a covered entity guarantees a swap between a subsidiary that is a covered bank and the covered bank's counterparty.

[49] 12 CFR 217.402; 80 FR 49106 (August 14, 2015). *See* proposed rule § 252.82(a)(1).

[50] *Id.;* 12 CFR part 217, subpart E.

[51] 12 U.S.C. 5365(a)(1)(B).

[52] *See* proposed rule § 252.82(a).

[53] Under the clean holding company component of the Board's recent TLAC proposal, the top-tier holding companies of U.S. GSIBs would be prohibited from entering into direct QFCs with third parties. *See* 80 FR 74926, 74945.

Banking Supervision (global methodology).[54]

As discussed above, the Board's GSIB surcharge rule identifies the most systemically important banking organizations on the basis of their attributes in the categories of size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity. While the GSIB surcharge rule applies only to U.S. bank holding companies, its methodology is equally well-suited to evaluating the systemic importance of foreign banking organizations. The global methodology generally evaluates the same attributes and would identify the same set of GSIBs as the Board's methodology.

As with U.S. GSIBs, the proposal's focus on those foreign banking organizations that qualify as GSIBs is in keeping with the Dodd-Frank Act's mandate that more stringent prudential standards be applied to the most systemically important banking organizations.[55] Moreover, the use of the GSIB surcharge rule to identify foreign GSIBs as well as U.S. GSIBs promotes a level playing field between U.S. and foreign banking organizations.

The proposal would cover only the U.S. operations of foreign GSIBs. As with the coverage of subsidiaries of U.S. GSIBs, coverage of the U.S. operations of foreign banks will enhance the orderly resolution of the foreign bank and its U.S. operations. In particular, covering QFCs that involve any U.S. subsidiary, U.S. branch, or U.S. agency of a foreign GSIB will reduce the potentially disruptive cancellation of those QFCs if the foreign bank or any of its subsidiaries enters resolution.[56]

Question 2: The Board invites comment on the proposed definition of the term "covered entity."

Question 3: The Board invites comment on alternative approaches for determining the scope of application of the proposed restrictions.

Question 4: The Board invites comment on whether the proposal should be expanded to cover banking organizations that are not GSIBs but that engage in especially high levels of QFC activity. If so, what specific metrics should be used to identify such banking organizations?

B. Covered QFCs

General definition. The proposal would apply to any "covered QFC," generally defined as any QFC that a covered entity enters into, executes, or otherwise becomes party to.[57] "Qualified financial contract" or "QFC" would be defined as in section 210(c)(8)(D) of Title II of the Dodd-Frank Act and would include swaps, repo and reverse repo transactions, securities lending and borrowing transactions, commodity contracts, and forward agreements.[58]

The proposed definition of "covered QFC" is intended to limit the proposed restrictions to those financial transactions whose disorderly unwind has substantial potential to frustrate the orderly resolution of a GSIB, as discussed above. By adopting the Dodd-Frank Act's definition, the proposed rule would extend the benefits of the stay and transfer protections to the same types of transactions in the event the covered entity enters bankruptcy. In this way, the proposal enhances the prospects for an orderly resolution in bankruptcy (as opposed to resolution under Title II of the Dodd-Frank Act) of a covered entity.

Question 5: The Board invites comment on the proposed definitions of "QFC" and "covered QFC." Are there financial transactions that could pose a similar risk to U.S. financial stability if a GSIB were to fail but that would not be included within the proposed definitions of QFC and covered QFC? Are there transactions that would be included within the proposed definitions but that would not present risks justifying the application of this proposal? Please explain.

Exclusion of cleared QFCs. The proposal would exclude from the definition of "covered QFC" all QFCs that are cleared through a central counterparty.[59] The issues that the proposal is intended to address with respect to non-cleared QFCs may also exist in the context of centrally cleared QFCs. However, clearing through a central counterparty also provides unique benefits to the financial system as well as unique issues related to the cancellation of cleared contracts. Accordingly, the Board continues to consider the appropriate treatment of centrally cleared QFCs, in light of differences between cleared and non-cleared QFCs with respect to contractual arrangements, counterparty credit risk, default management, and supervision. The Board is also considering whether to propose a regulatory regime that would address the continuity of cleared QFCs during the resolution of a GSIB within the broader context of safeguarding GSIB access to financial market utilities, including central counterparties, during the orderly resolution of the GSIB.

Question 6: The Board invites comment on the proposed exclusion of cleared QFCs, including the potential effects on the financial stability of the United States of excluding cleared QFCs as well as the potential effects on U.S. financial stability of subjecting covered entities' relationships with central counterparties to restrictions analogous to this proposal's restrictions on covered entities' non-cleared QFCs.

Exclusion of certain QFCs under multi-branch master agreements of foreign banking organizations. To avoid imposing unnecessary restrictions on QFCs that are not closely connected to the United States, the proposal would exclude from the definition of "covered QFC" certain QFCs of foreign GSIBs that lack a close connection to the foreign GSIB's U.S. operations.[60] The proposed definition of "QFC" includes master agreements that apply to QFCs.[61] Master agreements are contracts that contain general terms that the parties wish to apply to multiple transactions between them; having executed the master agreement, the parties can then include those terms in future contracts through reference to the master agreement. Moreover, the Dodd-Frank Act's definition of "qualified financial contract," which the proposal would adopt, treats master agreements for QFCs together with all supplements to the master agreement (including underlying transactions) as a single QFC.[62]

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[54] *See* proposed rule § 252.87. The Basel Committee on Banking Supervision (BCBS) is a committee of bank supervisory authorities established by the central bank governors of the Group of Ten countries in 1975. The committee's membership consists of senior representatives of bank supervisory authorities and central banks from Argentina, Australia, Belgium, Brazil, Canada, China, France, Germany, Hong Kong SAR, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Russia, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. In 2011, the BCBS adopted the global methodology to identify global systemically important banking organizations and assess their systemic importance. *See* "Global systemically important banks: Assessment methodology and the additional loss absorbency requirement," available at *http://www.bis.org/publ/bcbs207.htm*. In 2013, the BCBS published a revised document, which provides certain revisions and clarifications to the global methodology. *See* "Global systemically important banks: Updated assessment methodology and the higher loss absorbency requirement," available at *http://www.bis.org/publ/bcbs255.htm*.

In November 2015, the FSB and the BCBS published an updated list of banking organizations that are GSIBs under the assessment methodology. The list includes the eight U.S. GSIBs and the following 22 foreign banking organizations: Agricultural Bank of China, Bank of China, Barclays, BNP Paribas, China Construction Bank, Credit Suisse, Deutsche Bank, Groupe BPCE, Groupe Crédit Agricole, Industrial and Commercial Bank of China Limited, HSBC, ING Bank, Mitsubishi UFJ FG, Mizuho FG, Nordea, Royal Bank of Scotland, Santander, Société Générale, Standard Chartered, Sumitomo Mitsui FG, UBS, and Unicredit Group. See FSB, "2015 update of list of global systemically important banks" (November 3, 2015), available at *http://www.fsb.org/wp-content/uploads/2015-update-of-list-of-global-systemically-important-banks-G-SIBs.pdf*.

[55] 12 U.S.C. 5365(a)(1)(B).

[56] Under the clean holding company component of the Board's recent TLAC proposal, the U.S. intermediate holding companies of foreign GSIBs would be prohibited from entering into QFCs with third parties. *See* 80 FR 74926, 74945.

[57] *See* proposed rule § 252.83(a). For convenience, this preamble generally refers to "a covered entity's QFCs" or "QFCs to which a covered entity is party" as shorthand to encompass this definition.

[58] *See* proposed rule § 252.81; 12 U.S.C. 5390(c)(8)(D).

[59] *See* proposed rule § 252.82(b).

[60] *See* proposed rule § 252.86.

[61] *See* proposed rule § 252.81.

Foreign banks have master agreements that permit transactions to be entered into both at a U.S. branch or U.S. agency of the foreign bank and at a non-U.S. location of the foreign bank (such as a foreign branch). Notwithstanding the proposal's general treatment of a master agreement and all QFCs thereunder as a single QFC, the proposal would exclude QFCs under such a "multi-branch master agreement" that are not booked at a covered entity and for which no payment or delivery may be made at a covered entity.[63] The multi-branch master agreement would still be a covered QFC with respect to QFC transactions that are booked at a covered entity or for which payment or delivery may be made at a covered entity.

The purpose of this exclusion is to help ensure that, where a foreign GSIB has a multi-branch master agreement, the foreign GSIB will only have to conform those QFCs entered into under the multi-branch master agreement that could directly affect the obligations of the covered U.S. branch or U.S. agency of the foreign GSIB and that could therefore have the most direct effect on the financial stability of the United States.

Question 7: The Board invites comment on the proposed exclusion, including the potential benefits and detriments to U.S. financial stability of eliminating the proposed exclusion, the reduction in compliance burden that would be produced by the proposed exclusion, and the proposed exclusion's effect on netting under multi-branch master agreements.

C. Definition of "Default Right"

As discussed above, a party to a QFC generally has a number of rights that it can exercise if its counterparty defaults on the QFC by failing to meet certain contractual obligations. These rights are generally, but not always, contractual in nature. One common default right is a setoff right: the right to reduce the total amount that the non-defaulting party must pay by the amount that its defaulting counterparty owes. A second common default right is the right to liquidate pledged collateral and use the proceeds to pay the defaulting party's net obligation to the non-defaulting party. Other common rights include the ability to suspend or delay the non-defaulting party's performance under the contract or to accelerate the obligations of the defaulting party. Finally, the non-defaulting party typically has the right to terminate the QFC, meaning that the parties would not make payments that would have been required under the QFC in the future. The phrase "default right" in the proposed rule is broadly defined to include these common rights as well as "any similar rights."[64] Additionally, the definition includes all such rights regardless of source, including rights existing under contract, statute, or common law.

However, the proposed definition excludes two rights that are typically associated with the business-as-usual functioning of a QFC. First, same-day netting that occurs during the life of the QFC in order to reduce the number and amount of payments each party owes the other is excluded from the definition of "default right."[65] Second, contractual margin requirements that arise solely from the change in the value of the collateral or the amount of an economic exposure are also excluded from the definition.[66] The function of these exclusions is to leave such rights unaffected by the proposed rule. The exclusions are appropriate because the proposal is intended to improve resolvability by addressing default rights that could disrupt an orderly resolution, not to interrupt the parties' business-as-usual interactions under a QFC.

However, certain QFCs are also commonly subject to rights that would increase the amount of collateral or margin that the defaulting party (or a guarantor) must provide upon an event of default. The financial impact of such default rights on a covered entity could be similar to the impact of the liquidation and acceleration rights discussed above. Therefore, the proposed definition of "default right" includes such rights (with the exception discussed in the previous paragraph for margin requirements that depend solely on the value of collateral or the amount of an economic exposure).[67]

Finally, contractual rights to terminate without the need to show cause, including rights to terminate on demand and rights to terminate at contractually specified intervals, are excluded from the definition of "default right" for purposes the proposed rule's restrictions on cross-default rights (section 252.84 of the proposed rule).[68] This is consistent with the proposal's objective of restricting only default rights that are related, directly or indirectly, to the entry into resolution of an affiliate of the covered entity, while leaving other default rights unrestricted.

Question 8: The Board invites comment on all aspects of the proposed definition of "default right." In particular, are the proposed exclusions appropriate in light of the objectives of the proposal? To what extent does the exclusion of rights that allow a party to terminate the contract "on demand or at its option at a specified time, or from time to time, without the need to show cause" create an incentive for firms to include these rights in future contracts to evade the proposed restrictions? To what extent should other regulatory requirements (e.g., liquidity coverage ratio or the short-term wholesale funding components of the GSIB surcharge rule) be revised to create a counterincentive? Would additional exclusions be appropriate? To what extent should it be clarified that the "need to show cause" includes the need to negotiate alternative terms with the other party prior to termination or similar requirements (e.g., Master Securities Loan Agreement, Annex III—Term Loans)?

D. Required Contractual Provisions Related to the U.S. Special Resolution Regimes (Section 252.83 of the Proposed Rule)

Under the proposal, a covered QFC would be required to explicitly provide both (a) that the transfer of the QFC (and any interest or obligation in or under it and any property securing it) from the covered entity to a transferee would be effective to the same extent as it would be under the U.S. special resolution regimes if the covered QFC were governed by the laws of the United States or of a state of the United States and (b) that default rights with respect to the covered QFC that could be exercised against a covered entity could be exercised to no greater extent than they could be exercised under the U.S. special resolution regimes if the covered QFC were governed by the laws of the United States or of a state of the United States.[69] The proposal would define the term "U.S. special resolution regimes" to mean the FDI Act[70] and Title II of the Dodd-Frank Act,[71] along with regulations issued under those statutes.[72]

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[62] 12 U.S.C. 5390(c)(8)(D)(viii); *see also* 12 U.S.C. 1821(e)(8)(D)(vii); 109 H. Rpt. 31, Prt. 1 (April 8, 2005) (explaining that a "master agreement for one or more securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements will be treated as a single QFC under the FDIA or the FCUA (but only with respect to the underlying agreements are themselves QFCs)").

[63] *See* proposed rule § 252.86(a). With respect to a U.S. branch or U.S. agency of a foreign GSIB, a multi-branch master agreement that is a covered QFC solely because the master agreement permits agreements or transactions that are QFCs to be entered into at one or more U.S. branches or U.S. agencies of the foreign GSIB will be considered a covered QFC for purposes of this proposal only with respect to such agreements or transactions booked at such U.S. branches and U.S. agencies or for which a payment or delivery may be made at such U.S. branches or U.S. agencies.

[64] *See* proposed rule § 252.81.

[65] *See id.*

[66] *See id.*

[67] *See id.*

[68] *See* proposed rule §§ 252.81, 252.84.

The proposed requirements are not intended to imply that a given covered QFC is not governed by the laws of the United States or of a state of the United States, or that the statutory stay-and-transfer provisions would not in fact apply to a given covered QFC. Rather, the requirements are intended to provide certainty that all covered QFCs would be treated the same way in the context of a receivership of a covered entity under the Dodd-Frank Act or the FDI Act. The stay-and-transfer provisions of the U.S. special resolution regimes should be enforced with respect to all contracts of any U.S. GSIB entity that enters resolution under a U.S. special resolution regime as well as all transactions of the subsidiaries of such an entity. Nonetheless, it is possible that a court in a foreign jurisdiction would decline to enforce those provisions in cases brought before it (such as a case regarding a covered QFC between a covered entity and a non-U.S. entity that is governed by non-U.S. law and secured by collateral located outside the United States). By requiring that the effect of the statutory stay-and-transfer provisions be incorporated directly into the QFC contractually, the proposed requirement would help ensure that a court in a foreign jurisdiction would enforce the effect of those provisions, regardless of whether the court would otherwise have decided to enforce the U.S. statutory provisions themselves.[73] For example, the proposed provisions should prevent a U.K. counterparty of a U.S. GSIB from persuading a U.K. court that it should be permitted to seize and liquidate collateral located in the United Kingdom in response to the U.S. GSIB's entry into OLA resolution. And the knowledge that a court in a foreign jurisdiction would reject the purported exercise of default rights in violation of the required provisions would deter covered entities' counterparties from attempting to exercise such rights.

This requirement would advance the proposal's goal of removing QFC-related obstacles to the orderly resolution of a GSIB. As discussed above, restrictions on the exercise of QFC default rights are an important prerequisite for an orderly GSIB resolution. Congress recognized the importance of such restrictions when it enacted the stay-and-transfer provisions of the U.S. special resolution regimes. As demonstrated by the 2007–2009 financial crisis, the modern financial system is global in scope, and covered entities are party to large volumes of QFCs with connections to foreign jurisdictions. The stay-and-transfer provisions of the U.S. special resolution regimes would not achieve their purpose of facilitating orderly resolution in the context of the failure of a GSIB with large volumes of such QFCs if QFCs could escape the effect of those provisions. To remove any doubt about the scope of coverage of these provisions, the proposed requirement would ensure that the stay-and-transfer provisions apply as a matter of contract to all covered QFCs, wherever the transaction. This will advance the resolvability goals of the Dodd-Frank Act and the FDI Act.

This section of the proposal is consistent with efforts by regulators in other jurisdictions to address similar risks by requiring that financial firms within their jurisdictions ensure that the effect of the similar provisions under these foreign jurisdictions' respective special resolution regimes would be enforced by courts in other jurisdictions, including the United States. For example, the United Kingdom's Prudential Regulation Authority (PRA) recently required certain financial firms to ensure that their counterparties to newly created obligations agree to be subject to stays on early termination that are similar to those that would apply upon a U.K. firm's entry into resolution if the financial arrangements were governed by U.K. law.[74] Similarly, the German parliament passed a law in November 2015 requiring German financial institutions to have provisions in financial contracts that are subject to the law of a country outside of the European Union that acknowledge the provisions regarding the temporary suspension of termination rights and accept the exercise of the powers regarding such temporary suspension under the German special resolution regime.[75] Additionally, the Swiss Federal Council requires that banks "ensure at both the individual institution and group level that new agreements or amendments to existing agreements which are subject to foreign law or envisage a foreign jurisdiction are agreed only if the counterparty recognises a postponement of the termination of agreements in accordance with" the Swiss special resolution regime.[76]

Question 9: The Board invites comment on all aspects of this section of the proposal.

E. Prohibited Cross-Default Rights (Section 252.84 of the Proposed Rule)

Definitions. Section 252.84 of the proposal pertains to cross-default rights in QFCs between covered entities and their counterparties, many of which are subject to credit enhancements (such as a guarantee) provided by an affiliate of the covered entity. Because credit enhancements on QFCs are themselves "qualified financial contracts" under the Dodd-Frank Act's definition of that term (which this proposal would adopt), the proposal includes the following additional definitions in order to facilitate a precise description of the relationships to which it would apply.

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[69] *See* proposed rule § 252.83.

[70] 12 U.S.C. 1811–1835a.

[71] 12 U.S.C. 5381–5394.

[72] *See* proposed rule § 252.81.

[73] *See generally* Financial Stability Board, "Principles for Cross-border Effectiveness of Resolution Actions" (November 3, 2015), available at *http://www.fsb.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf.*

[74] *See* PRA Rulebook: CRR Firms and Non-Authorised Persons: Stay in Resolution Instrument 2015, available at *http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2515app1.pdf; see also* Bank of England, Prudential Regulation Authority, "Contractual stays in financial contracts governed by third-country law" (PS25/15) (November 2015), available at *http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2515.pdf.* These PRA rules apply to PRA-authorized banks, building societies, PRA-designated investment firms, and their qualifying parent undertakings, including U.K. financial holding companies and U.K. mixed financial holding companies.

[75] *See* Gesetz zur Sanierung und Abwicklung von Instituten und Finanzgruppen, Sanierungs-und Abwicklungsgesetz [SAG] [German Act on the Reorganisation and Liquidation of Credit Institutions], Dec. 10, 2014, § 60a, *https://www.gesetze-im-internet.de/bundesrecht/sag/gesamt.pdf.*

[76] *See* Verordnung über die Finanzmarktinfrastrukturen und das Marktverhalten im Effekten- und Derivatehandel [FinfraV] [Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading] Nov. 25, 2015, amending Bankenverordnung vom 30. April 2014 [BankV] [Banking Ordinance of 30 April 2014] Apr. 30, 2014, SR 952.02, art. 12 paragraph 2^{bis}, *translation at http://www.news.admin.ch/NSBSubscriber/message/attachments/42659.pdf; see also* Erläuterungsbericht zur Verordnung über die Finanzmarktinfrastrukturen und das Marktverhalten im Effekten- und Derivatehandel (Nov. 25, 2015) (providing commentary).

First, the proposal distinguishes between a credit enhancement and a "direct QFC," defined as any QFC that is not a credit enhancement.[77] The proposal also defines "direct party" to mean a covered entity that is itself a party to the direct QFC, as distinct from an entity that provides a credit enhancement.[78] In addition, the proposal defines "affiliate credit enhancement" to mean "a credit enhancement that is provided by an affiliate of the party to the direct QFC that the credit enhancement supports," as distinct from a credit enhancement provided by either the direct party itself or by an unaffiliated party.[79] Moreover, the proposal defines "covered affiliate credit enhancement" to mean an affiliate credit enhancement provided by a covered entity and defines "covered affiliate support provider" to mean the covered entity that provides the covered affiliate credit enhancement.[80] Finally, the proposal defines the term "supported party" to mean any party that is the beneficiary of a covered affiliate credit enhancement (that is, the QFC counterparty of a direct party, assuming that the direct QFC is subject to a covered affiliate credit enhancement).[81]

General prohibitions. Subject to the substantial exceptions discussed below, the proposal would prohibit a covered entity from being party to a covered QFC that allows for the exercise of any default right that is related, directly or indirectly, to the entry into resolution of an affiliate of the covered entity.[82] The proposal also would generally prohibit a covered entity from being party to a covered QFC that would prohibit the transfer of any credit enhancement applicable to the QFC (such as another entity's guarantee of the covered entity's obligations under the QFC), along with associated obligations or collateral, upon the entry into resolution of an affiliate of the covered entity.[83]

A primary purpose of the proposed restrictions is to facilitate the resolution of a GSIB outside of Title II, including under the Bankruptcy Code. As discussed above, the potential for mass exercises of QFC default rights is one reason why a GSIB's failure could do severe damage to financial stability. In the context of an SPOE resolution, if the GSIB parent's entry into resolution led to the mass exercise of cross-default rights by the subsidiaries' QFC counterparties, then the subsidiaries could themselves fail or experience financial distress. Moreover, the mass exercise of QFC default rights could entail asset firesales, which likely would affect other financial companies and undermine financial stability. Similar disruptive results can occur with an MPOE resolution of an affiliate of an otherwise performing entity triggers default rights on QFCs involving the performing entity.

In an SPOE resolution, this damage can be avoided if actions of the following two types are prevented: The exercise of direct default rights against the top-tier holding company that has entered resolution, and the exercise of cross-default rights against the operating subsidiaries based on their parent's entry into resolution. (Direct default rights against the subsidiaries would not be exercisable, because the subsidiaries would not enter resolution.) In an MPOE resolution, this damage occurs from exercise of default rights against a performing entity based on the failure of an affiliate.

Under the OLA, the Dodd-Frank Act's stay-and-transfer provisions would address both direct default rights and cross-default rights. But, as explained above, no similar statutory provisions would apply to a resolution under the Bankruptcy Code. This proposal attempts to address these obstacles to orderly resolution under the Bankruptcy Code by extending the stay-and-transfer provisions to any type of resolution of a covered entity. Similarly, the proposal would facilitate a transfer of the GSIB parent's interests in its subsidiaries, along with any credit enhancements it provides for those subsidiaries, to a solvent financial company by prohibiting covered entities from having QFCs that would allow the QFC counterparty to prevent such a transfer or to use it as a ground for exercising default rights.[84]

The proposal also is intended to facilitate other approaches to GSIB resolution. For example, it would facilitate a similar resolution strategy in which a U.S. depository institution subsidiary of a GSIB enters resolution under the FDI Act while its subsidiaries continue to meet their financial obligations outside of resolution.[85] Similarly, the proposal would facilitate the orderly resolution of a foreign GSIB under its home jurisdiction resolution regime by preventing the exercise of cross-default rights against the foreign GSIB's U.S. operations. The proposal would also facilitate the resolution of the U.S. intermediate holding company of a foreign GSIB, and the recapitalization of its U.S. operating subsidiaries, as part of a broader MPOE resolution strategy under which the foreign GSIB's operations in other regions would enter separate resolution proceedings. Finally, the proposal would broadly prevent the unanticipated failure of any one GSIB entity from bringing about the disorderly failures of its affiliates by preventing the affiliates' QFC counterparties from using the first entity's failure as a ground for exercising default rights against those affiliates that continue meet to their obligations.

The proposal is intended to enhance the potential for orderly resolution of a GSIB under the Bankruptcy Code, the FDI Act, or a similar resolution regime. By doing so, the proposal would advance the Dodd-Frank Act's goal of making orderly GSIB resolution workable under the Bankruptcy Code.[86]

The proposal could also benefit the counterparties of a subsidiary of a failed GSIB, by preventing the disorderly failure of the subsidiary and allowing it to continue to meet its obligations. While it may be in the individual interest of any given counterparty to exercise any available rights to run on a subsidiary of a failed GSIB, the mass exercise of such rights could harm the counterparties' collective interest by causing an otherwise-solvent subsidiary to fail. Therefore, like the automatic stay in bankruptcy, which serves to maximize creditors' ultimate recoveries by preventing a disorderly liquidation of the debtor, the proposal would mitigate this collective action problem to the benefit of the failed firm's creditors and counterparties by preventing a disorderly resolution. And because many creditors and counterparties of

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[77] *See* proposed rule § 252.84(c)(2).

[78] *See* proposed rule § 252.84(c)(1).

[79] *See* proposed rule § 252.84(c)(3).

[80] *See* proposed rule § 252.84(f)(2).

[81] *See* proposed rule § 252.84(f)(4).

[82] *See* proposed rule § 252.84(b)(1).

[83] *See* proposed rule § 252.84(b)(2). This prohibition would be subject to an exception that would allow supported parties to exercise default rights with respect to a QFC if the supported party would be prohibited from being the beneficiary of a credit enhancement provided by the transferee under any applicable law, including the Employee Retirement Income Security Act of 1974 and the Investment Company Act of 1940. This exception is substantially similar to an exception to the transfer restrictions in section 2(f) of the ISDA 2014 Resolution Stay Protocol (2014 Protocol) and the ISDA 2015 Universal Resolution Stay Protocol, which was added to address concerns expressed by asset managers during the drafting of the 2014 Protocol.

[84] *See* proposed rule § 252.84(b).

[85] As discussed above, the FDI Act would prevent the exercise of direct default rights against the depository institution, but it does not address the threat posed to orderly resolution by cross-default rights in the QFCs of the depository institution's subsidiaries. This proposal would facilitate orderly resolution under the FDI Act by filling that gap.

[86] *See* 12 U.S.C. 5365(d).

GSIBs are themselves systemically important financial firms, improving outcomes for those creditors and counterparties would further protect the financial stability of the United States.

General creditor protections. While the proposed restrictions would facilitate orderly resolution, they would also diminish the ability of covered entities' QFC counterparties to include certain protections for themselves in covered QFCs. In order to reduce this effect, the proposal includes several substantial exceptions to the proposed restrictions.[87] These permitted creditor protections are intended to allow creditors to exercise cross-default rights outside of an orderly resolution of a GSIB (as described above) and therefore would not be expected to undermine such a resolution.

First, in order to ensure that the proposed prohibitions would apply only to cross-default rights (and not direct default rights), the proposal would provide that a covered QFC may permit the exercise of default rights based on the direct party's entry into a resolution proceeding, other than a proceeding under a U.S. or foreign special resolution regime.[88] This provision would help ensure that, if the direct party to a QFC were to enter bankruptcy, its QFC counterparties could exercise any relevant direct default rights. Thus, a covered entity's direct QFC counterparties would not risk the delay and expense associated with becoming involved in a bankruptcy proceeding, and would be able to take advantage of default rights that would fall within the Bankruptcy Code's safe harbor provisions.

The proposal would also allow covered QFCs to permit the exercise of default rights based on the failure of the direct party, a covered affiliate support provider, or a transferee that assumes a credit enhancement to satisfy its payment or delivery obligations under the direct QFC or credit enhancement.[89] Moreover, the proposal would allow covered QFCs to permit the exercise of a default right in one QFC that is triggered by the direct party's failure to satisfy its payment or delivery obligations under another contract between the same parties. This exception takes appropriate account of the interdependence that exists among the contracts in effect between the same counterparties.

The proposed exceptions for the creditor protections described above are intended to help ensure that the proposal permits a covered entity's QFC counterparties to protect themselves from imminent financial loss and does not create a risk of delivery gridlocks or daisy-chain effects, in which a covered entity's failure to make a payment or delivery when due leaves its counterparty unable to meet its own payment and delivery obligations (the daisy-chain effect would be prevented because the covered entity's counterparty would be permitted to exercise its default rights, such as by liquidating collateral). These exceptions are generally consistent with the treatment of payment and delivery obligations under the U.S. special resolution regimes.[90]

These exceptions also help to ensure that a covered entity's QFC counterparty would not risk the delay and expense associated with becoming involved in a bankruptcy proceeding, since, unlike a typical creditor of an entity that enters bankruptcy, the QFC counterparty would retain its ability under the Bankruptcy Code's safe harbors to exercise direct default rights. This should further reduce the counterparty's incentive to run. Reducing incentives to run in the lead up to resolution promotes orderly resolution, since a QFC creditor run (such as a mass withdrawal of repo funding) could lead to a disorderly resolution and pose a threat to financial stability.

Additional creditor protections for supported QFCs. The proposal would allow additional creditor protections for a non-defaulting counterparty that is the beneficiary of a credit enhancement from an affiliate of the covered entity that is also a covered entity under the proposal.[91] The proposal would allow these creditor protections in recognition of the supported party's interest in receiving the benefit of its credit enhancement. These creditor protections would not undermine an SPOE resolution of a GSIB.

Where a covered QFC is supported by a covered affiliate credit enhancement,[92] the covered QFC and the credit enhancement would be permitted to allow the exercise of default rights under the circumstances discussed below after the expiration of a stay period. Under the proposal, the applicable stay period would begin when the credit support provider enters resolution and would end at the later of 5:00 p.m. (eastern time) on the next business day and 48 hours after the entry into resolution.[93] This portion of the proposal is similar to the stay treatment provided in a resolution under the OLA or the FDI Act.[94]

Under the proposal, default rights could be exercised at the end of the stay period if the covered affiliate credit enhancement has not been transferred away from the covered affiliate support provider and that support provider becomes subject to a resolution proceeding other than a proceeding under Chapter 11 of the Bankruptcy Code.[95] Default rights could also be exercised at the end of the stay period if the transferee (if any) of the credit enhancement enters a resolution proceeding, protecting the supported party from a transfer of the credit enhancement to a transferee that is unable to meet its financial obligations.

Default rights could also be exercised at the end of the stay period if the original credit support provider does not remain, and no transferee becomes, obligated to the same (or substantially similar) extent as the original credit support provider was obligated immediately prior to entering a resolution proceeding (including a Chapter 11 proceeding) with respect to (a) the credit enhancement applicable to the covered QFC, (b) all other credit enhancements provided by the credit support provider on any other QFCs between the same parties, and (c) all credit enhancements provided by the credit support provider between the direct party and affiliates of the direct party's QFC counterparty.[96] Such creditor protections would be permitted in order to prevent the support provider or the transferee from "cherry picking" by assuming only those QFCs of a given counterparty that are favorable to the support provider or transferee. Title II and the FDI Act contain similar provisions to prevent cherry picking.

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[87] *See* proposed rule § 252.84(e).

[88] *See* proposed rule § 252.84(e)(1). Special resolution regimes typically stay direct default rights, but may not stay cross-default rights. For example, as discussed above, the FDI Act stays direct default rights, see 12 U.S.C. 1821(e)(10)(B), but does not stay cross-default rights, whereas the Dodd-Frank Act's OLA stays direct default rights and cross-defaults arising from a parent's receivership, see 12 U.S.C. 5390(c)(10)(B), 5390(c)(16).

[89] *See* proposed rule § 252.84(e)(2)–(3).

[90] *See* 12 U.S.C. 1821(e)(8)(G)(ii), 5390(c)(8)(F)(ii) (suspending payment and delivery obligations for one business day or less).

[91] *See* proposed rule § 252.84(g).

[92] Note that the exception in § 252.84(g) of the proposed rule would not apply with respect to credit enhancements that are not covered affiliate credit enhancements. In particular, it would not apply with respect to a credit enhancement provided by a non-U.S. entity of a foreign GSIB, which would not be a covered entity under the proposal. Such credit enhancements would be excluded in order to help ensure that the resolution of a non-U.S. entity would not negatively affect the financial stability of the United States by allowing for the exercise of default rights against a covered entity.

[93] *See* proposed rule § 252.84(h)(1).

[94] *See* 12 U.S.C. 1821(e)(10)(B)(I), 5390(c)(10)(B)(i), 5390(c)(16)(A). While the proposed stay period is similar to the stay periods that would be imposed by the U.S. special resolution regimes, it could run longer than those stay periods under some circumstances.

[95] *See* proposed rule § 252.84(g)(1). Chapter 11 (11 U.S.C. 1101–1174) is the portion of the Bankruptcy Code that provides for the reorganization of the failed company, as opposed to its liquidation, and, relative to special resolution regimes, is generally well-understood by market participants.

Finally, if the covered affiliate credit enhancement is transferred to a transferee, then the non-defaulting counterparty could exercise default rights at the end of the stay period unless either (a) all of the support provider's ownership interests in the direct party are also transferred to the transferee or (b) reasonable assurance is provided that substantially all of the support provider's assets (or the net proceeds from the sale of those assets) will be transferred to the transferee in a timely manner. These conditions would help to assure the supported party that the transferee would be at least roughly as financially capable of providing the credit enhancement as the covered affiliate support provider. Title II contains a similar provision regarding affiliate credit enhancements.[97]

Creditor protections related to FDI Act proceedings. Moreover, in the case of a covered QFC that is supported by a covered affiliate credit enhancement, both the covered QFC and the credit enhancement would be permitted to allow the exercise of default rights related to the credit support provider's entry into resolution proceedings under the FDI Act[98] under the following circumstances: (a) After the FDI Act stay period,[99] if the credit enhancement is not transferred under the relevant provisions of the FDI Act[100] and associated regulations, and (b) during the FDI Act stay period, to the extent that the default right permits the supported party to suspend performance under the covered QFC to the same extent as that party would be entitled to do if the covered QFC were with the credit support provider itself and were treated in the same manner as the credit enhancement.[101] This provision is intended to ensure that a QFC counterparty of a subsidiary of a bank that goes into FDI Act receivership can receive the same level of protection that the FDI Act provides to QFC counterparties of the bank itself.

Prohibited terminations. In case of a legal dispute as to a party's right to exercise a default right under a covered QFC, the proposal would require that a covered QFC must provide that, after an affiliate of the direct party has entered a resolution proceeding, (a) the party seeking to exercise the default right bears the burden of proof that the exercise of that right is indeed permitted by the covered QFC and (b) the party seeking to exercise the default right must meet a "clear and convincing evidence" standard, a similar standard,[102] or a more demanding standard.

The purpose of this proposed requirement is to deter the QFC counterparty of a covered entity from thwarting the purpose of this proposal by exercising a default right because of an affiliate's entry into resolution under the guise of other default rights that are unrelated to the affiliate's entry into resolution.

Agency transactions. In addition to entering into QFCs as principals, GSIBs may engage in QFCs as agent for other principals. For example, a GSIB subsidiary may enter into a master securities lending arrangement with a foreign bank as agent for a U.S.-based pension fund. The GSIB would document its role as agent for the pension fund, often through an annex to the master agreement, and would generally provide to its customer (the principal party) a securities replacement guarantee or indemnification for any shortfall in collateral in the event of the default of the foreign bank.[103] A covered entity may also enter into a QFC as principal where there is an agent acting on its behalf or on behalf of its counterparty.

This proposal would apply to a covered QFC regardless of whether the covered entity or the covered entity's direct counterparty is acting as a principal or as an agent. Section 252.83 and section 252.84 do not distinguish between agents and principals with respect to default rights or transfer restrictions applicable to covered QFCs. Section 252.83 would limit default rights and transfer restrictions that the principal and its agent may have against a covered entity consistent with the U.S. special resolution regimes.[104] Section 252.84 would ensure that, subject to the enumerated creditor protections, neither the agent nor the principal could exercise cross-default rights under the covered QFC against the covered entity based on the resolution of an affiliate of the covered entity.[105]

Compliance with the ISDA 2015 Resolution Stay Protocol. As an alternative to compliance with the requirements of section 252.84 that are described above, a covered entity would comply with the proposed rule to the extent its QFCs are amended by to the current ISDA 2015 Universal Resolution Stay Protocol, including the Securities Financing Transaction Annex and the Other Agreements Annex, as well as subsequent, immaterial amendments to the Protocol.[106] The Protocol "enables parties to amend the terms of their [contracts] to contractually recognize the cross-border application of special resolution regimes applicable to certain financial companies and support the resolution of certain financial companies under the United States Bankruptcy Code."[107] The Protocol amends ISDA Master Agreements, which are used for derivatives transactions. Market participants that adhere to the Protocol would amend their master agreements for securities financing transactions pursuant to the

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[96] *See* proposed rule § 252.84(g)(3).

[97] 12 U.S.C. 5390(c)(16)(A).

[98] As discussed above, the FDI Act stays direct default rights against the failed depository institution but does not stay the exercise of cross-default rights against its affiliates.

[99] Under the FDI Act, the relevant stay period runs until 5:00 p.m. (eastern time) on the business day following the appointment of the FDIC as receiver. 12 U.S.C. 1821(e)(10)(B)(I).

[100] 12 U.S.C. 1821(e)(9)–(10).

[101] *See* proposed rule § 252.84(i).

[102] The reference to a "similar" burden of proof is intended to allow covered QFCs to provide for the application of a standard that is analogous to clear and convincing evidence in jurisdictions that do not recognize that particular standard. A covered QFC would not be permitted to provide for a lower standard.

[103] The definition of QFC under Title II of the Dodd-Frank Act includes security agreements and other credit enhancements as well as master agreements (including supplements). 12 U.S.C. 5390(c)(8)(D).

[104] *See* proposed rule § 252.83(a)(3).

[105] *See* proposed rule § 252.84(d). If a covered entity (acting as agent) is a direct party to a covered QFC, then the general prohibitions of section 252.84(d) would only affect the substantive rights of the agent's principal(s) to the extent that the covered QFC provides default rights based directly or indirectly on the entry into resolution of an affiliate of the covered entity (acting as agent). *See also* proposed rule § 252.84(a)(3).

[106] International Swaps and Derivatives Association, Inc., "ISDA 2015 Universal Resolution Stay Protocol" (November 4, 2015), available at *http://assets.isda.org/media/ac6b533f-3/5a7c32f8-pdf/*. The Protocol was developed by a working group of member institutions of the International Swaps and Derivatives Association, Inc. (ISDA), in coordination with the Board, the FDIC, the OCC, and foreign regulatory agencies. The Securities Financing Transaction Annex was developed by the International Capital Markets Association, the International Securities Lending Association, and the Securities Industry and Financial Markets Association, in coordination with ISDA. ISDA is expected to supplement the Protocol with ISDA Resolution Stay Jurisdictional Modular Protocols for the United States and other jurisdictions. A jurisdictional module for the United States that is substantively identical to the Protocol in all respects aside from exempting QFCs between adherents that are not covered entities or covered banks would be consistent with the current proposal.

[107] Protocol Press Release at *http://www2.isda.org/functional-areas/protocol-management/protocol/22*.

Securities Financing Transaction Annex to the Protocol and would amend all other QFCs pursuant to the Other Agreements Annex. Thus, a covered entity would comply with the proposed rule with respect to all of its covered QFCs through adherence to the Protocol and the annexes.

The Protocol has the same general objective as the proposed rule: To make GSIBs more resolvable by amending their contracts to, in effect, contractually recognize the applicability of U.S. special resolution regimes [108] and to restrict cross-default provisions to facilitate orderly resolution under the U.S. Bankruptcy Code. Moreover, the provisions of the Protocol largely track the requirements of the proposed rule.[109]

The scope of the stay and transfer provisions in the Protocol are narrower than the stay and transfer provisions required under the proposal.[110] The Protocol also allows any non-defaulting counterparty to exercise its related default rights [111] under the agreement if an affiliate of its direct party enters resolution proceedings (other than U.S. Federal insolvency proceedings) while the top-tier U.S. parent of the counterparty's direct party remains outside of resolution proceedings.

The Protocol also provides a number of protections to supported parties that are additional to, or stronger versions of, the creditor protections the proposal otherwise permits for supported parties.[112] Specifically, the Protocol's protections require that the covered affiliate support provider or transferee to remain obligated to the "same extent" for its stay to remain effective,[113] and that the direct party remain duly registered and licensed by relevant regulatory bodies.[114] In addition, the Protocol is more specific than the proposal as to the form and timing of the assurance that the covered affiliate support provider's assets (or net proceeds therefrom) would be transferred to the transferee.[115]

A number of the additional creditor protections of the Protocol depend on whether credit enhancements have been transferred to another entity. Additional protections for situations in which the credit enhancements are transferred include the transferee satisfying all material payment and delivery obligations to each of its creditors during the stay period; [116] the transferee continuing to satisfy all financial covenants and other terms applicable to the credit enhancement provider under the agreement after the stay period; [117] and the transferee continuing to satisfy all provisions and covenants regarding the attachment, enforceability, perfection, or priority of property securing the obligations of the credit enhancement after the stay period.[118] Additional protections for situations in which the affiliate credit support provider remains obligated after the resolution proceeding include the bankruptcy court's issuance of an order by the end of the stay period providing supported parties with increased creditor priority in bankruptcy.[119]

As compared to the creditor protections provided in the proposal, the Protocol's additional creditor protections appear to meaningfully increase a supported party's assurance that material payment and delivery obligations under its covered QFCs will continue to be performed and should meaningfully decrease the supported party's credit risk to its direct parties.[120]

Moreover, the additional creditor protections do not appear to materially diminish the prospects for the orderly resolution of a GSIB entity because the Protocol includes a number of desirable features that the proposal lacks. First, when an entity (whether or not it is a covered entity) adheres to the Protocol, it necessarily adheres to the Protocol with respect to all covered entities that have also adhered to the Protocol rather than one or a subset of covered entities (as the proposal may otherwise permit).[121] Since many covered entities have already adhered to the Protocol, any other entity that chooses to adhere will simultaneously adhere with respect to all covered entities.[122] This feature appears to allow the Protocol to address impediments to resolution on an industry-wide basis and increase market certainty, transparency, and equitable treatment with respect to default rights of non-defaulting parties.[123] Other features of the Protocol that the proposal otherwise lacks also reflect positively toward other proposed factors relevant to proposals for enhanced creditor protections: The Protocol amends all existing transactions of adhering parties; [124] does not provide the counterparty with default rights in addition to those provided under the underlying QFC,[125] and, as noted, applies to all QFCs.[126] These features also increase the chances that all or most of the QFC counterparties to a GSIB will be stayed to the same extent in the resolution of the GSIB and improve the chances that a GSIB could be resolved in an orderly manner. Finally, the Protocol is not limited to resolution under the U.S. Bankruptcy Code but also includes U.S. special resolution regimes and certain non-U.S. special resolution regimes, which should help facilitate the resolution of a GSIB across a broader range of scenarios.

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[108] The Protocol also includes other special resolution regimes. Currently, the Protocol includes special resolution regimes in place in France, Germany, Japan, Switzerland, and the United Kingdom. Other special resolution regimes that meet the definition of "Protocol-eligible Regime" may be added to the Protocol.

[109] Sections 2(a) and (b) of the Protocol provide the stays required under paragraph (b)(1) of proposed rule § 252.84 for the most common U.S. insolvency regimes. Section 2(f) of the Protocol overrides transfer restrictions as required under paragraph (b)(2) of proposed rule § 252.84 for transfers that are consistent with the Protocol. The Protocol's exemptions from the stay for "Performance Default Rights" and the "Unrelated Default Rights" described in paragraph (a) of the definition are consistent with the proposal's general creditor protections permitted under paragraph (b) of proposed rule § 252.84. The Protocol's burden of proof provisions (see section 2(i) of the Protocol and the definition of Unrelated Default Rights) and creditor protections for credit enhancement providers in FDI Act proceedings (see Section 2(d) of the Protocol) are also consistent with the paragraphs (j) and (i), respectively, of proposed rule § 252.84. Note also that, although exercise of Performance Default Rights under the Protocol does not require a showing of clear and convincing evidence while these same rights under the proposal (proposed rule § 225.84(e)) would require such a showing, this difference between the Protocol and the proposal does not appear to be meaningful because clearly documented evidence for such default rights (*i.e.*, payment and performance failures, entry into resolution proceedings) should exist.

[110] The Protocol only stays default rights arising from proceedings under Chapters 7 and 11 of the Bankruptcy Code, the FDI Act, and the Securities Investor Protection Act (U.S. Federal insolvency proceedings). The stay required under proposed rule § 252.84 is broader; it requires a stay to apply under any receivership, insolvency, liquidation, resolution, or similar proceeding, and therefore includes applicable state and foreign insolvency proceedings.

[111] Related default rights refer to default rights based solely on such insolvency or receivership of the affiliate. *See* paragraph (b) of the definition of Unrelated Default Rights in the Protocol.

[112] The Protocol is consistent with the creditor protections of paragraphs (e)(1) and (e)(2) of § 252.84. Section 2(b) of the Protocol requires the support provider to have entered only a Chapter 11 resolution proceeding. Section 2(b)(ii)(A)(II) requires the transferee to remain outside of resolution proceedings.

[113] See paragraph (a) of the definition of DIP Stay Conditions and paragraphs (b) and (c) of the definition of Transfer Stay Conditions in the Protocol. In contrast, the proposal would not permit a covered QFC to exempt the non-defaulting party from the stay and transfer requirements of proposed rule § 252.84 if the covered affiliate support provider or transferee remains obligated to the same *or substantially similar extent* as the covered affiliate support provider was immediately prior to entering the resolution proceeding. *See* proposed rule § 252.84(g)(3).

[114] *See* section 2(b)(ii)(C)(I) and 2(b)(iii)(C) of the Protocol.

[115] The proposal would not otherwise permit a QFC to be relieved from § 252.84's general prohibitions as long as the non-defaulting counterparty to receives "reasonable assurance" that the covered affiliate support provider's assets (or net proceeds therefrom) would be transferred to the transferee, as described above. *See* proposed rule § 252.84(g)(4). The Protocol requires that the bankruptcy court issue order to that effect at the end of the stay period. Section 2(b)(ii) of the Protocol.

[116] Section 2(b)(ii)(A)(II) of the Protocol.

[117] Section 2(b)(ii)(C)(II) of the Protocol. This requirement only applies with respect to transfers to transferees that are not affiliated with the credit support provider. See *id.;* definition of Bankruptcy Bridge Company of the Protocol.

[118] Section 2(b)(ii)(C)(III) of the Protocol.

[119] Section 2(b)(iii)(B) and the definition of DIP Stay Conditions of the Protocol. The Protocol permits such closeout pursuant to section 2(c). The order would (1) include the grant of administrative expense status to the non-defaulting counterparty's claims against the credit enhancements the affiliate support provider has provided the counterparty; (2) allow the non-defaulting counterparty to exercise its default rights with respect to a direct QFCs supported by the affiliate support provider without further involvement from the bankruptcy court if the direct party or affiliate support provider fail to meet any material obligations to the counterparty under the agreement; and (3) allow the counterparty to exercise its default rights against the direct party and affiliate support provider without further involvement from the bankruptcy court if the direct party failed to pay or deliver to another party any close-out amount when due and the affiliate support provider does not satisfy its obligations under a credit enhancement that supports the direct QFC with the other party. Paragraphs (a)–(c) of the definition of Creditor Protection Order of the Protocol.

[120] *See* proposed rule § 252.85(d)(7), (9).

[121] Under section 4(a) of the Protocol, the Protocol is generally effective as between any two adhering parties, once the relevant effective date has arrived. Under section 4(b)(ii), an adhering party that is not a covered entity may choose to opt out of section 2 of the Protocol with respect to its contracts with any other adhering party that is also not a covered

The features, considered together, appear to advance the proposal's objective of increasing the likelihood that a resolution of a GSIB under a range of scenarios could be carried out in an orderly manner.[127] For these reasons, and consistent with the Board's objective of increasing GSIB resolvability, the proposed rule would allow a covered entity to bring its covered QFCs into compliance by amending them through adherence to the Protocol.

Question 10: The Board invites comment on the proposed restrictions on cross-default rights in covered entities' QFCs. Is the proposal sufficiently clear, such that parties to a conforming QFC will understand what default rights are and are not exercisable in the context of a GSIB resolution? How could the proposed restrictions be made clearer?

Question 11: Are the proposed restrictions on cross-default rights under-inclusive, such that the proposed restrictions would permit default rights that would have the same or similar potential to undermine an orderly GSIB resolution and should therefore be subjected to similar restrictions?

Question 12: In particular, would it be appropriate for the prohibition to explicitly cover default rights that are based on or related to the "financial condition" of an affiliate of the direct party (for example, rights based on an affiliate's credit rating, stock price, or regulatory capital level)? [128]

Question 13: The Board invites comment on whether the proposed restrictions should be expanded to cover contractual rights that a QFC counterparty may have to terminate the QFC at will or without cause, including rights that arise on a periodic basis. Could such rights be used to circumvent the proposed restrictions on cross-default rights? If so, how, if at all, should the proposed rule regulate such contractual rights?

Question 14: The Board invites comment on the proposed provisions permitting specific creditor protections in covered entities' QFCs. Does the proposal draw an appropriate balance between protecting financial stability from risks associated with QFC unwinds and maintaining important creditor protections? Should the proposed set of permitted creditor protections be expanded to allow for other creditor protections that would fall within the proposed restrictions? Is the proposed set of permitted creditor protections sufficiently clear?

Question 15: The Board invites comment on its proposal to treat as compliant with section 252.84 of the proposal any covered QFC that has been amended by the Protocol. Does adherence to the Protocol suffice to meet the goals of this proposal and appropriately safeguard U.S. financial stability?

Question 16: The Board invites comment on the proposed requirement for burden-of-proof provisions in covered QFCs. Is the proposed requirement drafted appropriately to advance the goals of this proposal? Would those goals be better advanced by alternative or complementary provisions?

Question 17: The Board invites comment on all aspects of the proposed treatment of agency transactions, including whether creditor protections should apply to QFCs where the direct party is acting as agent under the QFC.

F. Process for Approval of Enhanced Creditor Protections (Section 252.85 of the Proposed Rule)

As discussed above, the proposed restrictions would leave many creditor protections that are commonly included in QFCs unaffected. The proposal would also allow any covered entity to submit to the Board a request to approve as compliant with the rule one or more QFCs that contain additional creditor protections—that is, creditor protections that would be impermissible under the restrictions set forth above. A covered entity making such a request would be required to provide an analysis of the contractual terms for which approval is requested in light of a range of factors that are set forth in the proposed rule and intended to facilitate the Board's consideration of whether permitting the contractual terms would be consistent with the proposed restrictions.[129] The Board also expects to consult with the FDIC and OCC during its consideration of such a request.

The first two factors concern the potential impact of the requested creditor protections on GSIB resilience and resolvability. The next four concern the potential scope of the proposal: Adoption on an industry-wide basis, coverage of existing and future transactions, coverage of one or multiple QFCs, and coverage of some or all covered entities. Creditor protections that may be applied on an industry-wide basis may help to ensure that impediments to resolution are addressed on a uniform basis, which could increase market certainty, transparency, and equitable treatment. Creditor protections that apply broadly to a range of QFCs and covered entities would increase the chance that all of a GSIB's QFC counterparties would be treated the same way during a resolution of that GSIB and may improve the prospects for an orderly resolution of that GSIB. By contrast, proposals that would expand counterparties' rights beyond those afforded under existing QFCs would conflict with the proposal's goal of reducing the risk of mass unwinds of GSIB QFCs. The proposal also includes three factors that focus on the creditor protections specific to supported

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entity. However, the Protocol will apply to relationships between any covered entity that adheres and any other adhering party.

[122] *See* proposed rule § 252.85(d)(3), (6).

[123] *See* proposed rule § 252.85(d)(3).

[124] *See* proposed rule § 252.85(d)(4). If a covered entity intends to continue to comply with the requirements of the proposal through the Protocol alternative after its initial adherence, the covered entity should ensure that future master agreements and credit enhancements also become subject to the terms of the Protocol.

[125] *See* proposed rule § 252.85(d)(10). Moreover, the Protocol overrides unexercised default rights in certain circumstances. Section 2(e) of the Protocol.

[126] *See* proposed rule § 252.85(d)(5).

[127] *See* proposed rule § 252.85(d)(1)–(2).

[128] *Cf.* 12 U.S.C. 5390(c)(16) (staying "any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of the covered financial company").

[129] Proposed rule § 252.85(d)(1)–(10).

parties. The Board may weigh the appropriateness of additional protections for supported QFCs against the potential impact of such provisions on the orderly resolution of a GSIB.

In addition to analyzing the request under the enumerated factors, a covered entity requesting that the Board approve enhanced creditor protections would be required to submit a legal opinion stating that the requested terms would be valid and enforceable under the applicable law of the relevant jurisdictions, along with any additional relevant information requested by the Board.

Under the proposal, the Board could approve a request for an alternative set of creditor protections if the terms of the QFC, as compared to a covered QFC containing only the limited exceptions permitted by the proposed rule, would prevent or mitigate risks to the financial stability of the United States that could arise from the failure of a GSIB and would protect the safety and soundness of bank holding companies and state member banks to at least the same extent. Once approved by the Board, enhanced creditor protections could be used by other covered entities (in addition to the covered entity that submitted the request for Board approval) as appropriate. The proposed request-and-approval process would improve flexibility by allowing for an industry-proposed alternative to the set of creditor protections permitted by the proposed rule while ensuring that any approved alternative would serve the proposal's policy goals to at least the same extent as a covered QFC that complies fully with the proposed rule.

Question 18: The Board invites comment on all aspects of the proposed process for approval of enhanced creditor protections. Are the proposed considerations the appropriate factors for the Board to take into account in deciding whether to grant a request for approval? What other considerations are potentially relevant to such a decision?

III. Transition Periods

Under the proposal, the rule would take effect on the first day of the first calendar quarter that begins at least one year after the issuance of the final rule (effective date).[130] Entities that are covered entities when the final rule is issued would be required to comply with the proposed requirements beginning on the effective date. Thus, a covered entity would be required to ensure that covered QFCs entered into on or after the effective date comply with the rule's requirements.[131] Moreover, a covered entity would be required to bring a preexisting covered QFC entered into prior to the effective date into compliance with the rule no later than the first date on or after the effective date on which the covered entity or an affiliate (that is also a covered entity or covered bank) enters into a new covered QFC with the counterparty to the preexisting covered QFC or an affiliate of the counterparty.[132] (Thus, a covered entity would not be required to conform a preexisting QFC if that covered entity and its affiliates do not enter into any new QFCs with the same counterparty or its affiliates on or after the effective date.) Finally, an entity that becomes a covered entity after the final rule is issued would be required to comply by the first day of the first calendar quarter that begins at least one year after the entity becomes a covered entity.[133]

By permitting a covered entity to remain party to noncompliant QFCs entered into before the effective date unless the covered entity or any affiliate (that is also a covered entity or covered bank) enters into new QFCs with the same counterparty or its affiliates, the proposal strikes a balance between ensuring QFC continuity if the GSIB were to fail and ensuring that covered entities and their existing counterparties can avoid any compliance costs and disruptions associated with conforming existing QFCs by refraining from entering into new QFCs. The requirement that a covered entity ensure that all existing QFCs with a particular counterparty and its affiliates are compliant before it or any affiliate of the covered entity (that is also a covered entity or covered bank) enters into a new QFC with the same counterparty or its affiliates after the effective date will provide covered entities with an incentive to seek the modifications necessary to ensure that their QFCs with their most important counterparties are compliant. Moreover, the volume of preexisting, noncompliant covered QFCs outstanding can be expected to decrease over time and eventually to reach zero. In light of these considerations, and to avoid creating potentially inappropriate compliance costs with respect to existing QFCs with counterparties that, together with their affiliates, do not enter new covered QFCs with the GSIB on or after the effective date, it would be appropriate to permit a limited number of noncompliant QFCs to remain outstanding, in keeping with the terms described above. That said, the Board will monitor covered entities' levels of noncompliant QFCs and evaluate the risk, if any, that they pose to the safety and soundness of the GSIBs or to U.S. financial stability.

Question 19: The Board invites comment on the proposed transition periods and the proposed treatment of preexisting QFCs.

Question 20: Would it be appropriate to impose different compliance deadlines with respect to different classes of QFCs? If so, how should those classes be distinguished, and which should be required to be brought into compliance first?

IV. Costs and Benefits

The proposed rule is intended to yield substantial net benefits for the financial stability of the United States by reducing the potential that resolution of a GSIB, particularly a resolution in bankruptcy, will be disorderly and disruptive to financial stability. These benefits are expected to substantially outweigh the costs associated with the proposal.

The primary costs to covered entities associated with the proposed requirements for covered entities' QFCs would be costs associated with drafting and negotiating compliant contracts with potential QFC counterparties. These costs would be small relative to the revenue of covered entities and to the costs of doing business in the financial sector generally.

The proposal could also impose costs on covered entities to the extent that they may need to provide their QFC counterparties with better contractual terms in order to compensate those parties for the loss of their ability to exercise default rights that would be restricted by the proposal. These costs may be higher than the drafting and negotiating costs. However, they are also expected to be relatively small because of the limited nature of the rights counterparties are required to reduce, the unlikelihood that the counterparty will have to exercise these rights and the availability of other forms of protection for counterparties.

The proposal could also create economic costs by causing a marginal reduction in QFC-related economic activity. This could mean that a QFC that would have been entered into in the absence of the proposed rule would not be entered into, and it could also mean that economic activity that would have been associated with that QFC would not occur (such as economic activity that would have otherwise been hedged with a derivatives contract or funded through a repo transaction).

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[130] Under section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994, new Board regulations that impose requirements on insured depository institutions generally must "take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form." 12 U.S.C. 4802(b).

[131] *See* proposed rule §§ 252.83(a)(2)(i); 252.84(a)(2)(i).

[132] *See* proposed rule §§ 252.83(a)(2)(ii), 252.84(a)(2)(ii).

[133] *See* proposed rule § 252.82(c)(1).

While uncertainty surrounding the future negotiations of economic actors makes a reliable quantification of any such costs difficult, costs from reduced QFC activity are expected to be very low. The proposed restrictions on default rights in covered QFCs are relatively narrow and would not affect a counterparty's rights in the event a GSIB fails to make payment on a QFC, or in response to its direct counterparty's entry into a bankruptcy proceeding (that is, the default rights covered by the Bankruptcy Code's "safe harbor" provisions). Counterparties are also able to prudently manage risk through other means, including entering into QFCs with entities that are not GSIB entities and therefore would not be subject to the proposed rule.

Additionally, the stay-and-transfer provisions of the Dodd-Frank Act and the FDI Act are already in force, and the ISDA Protocol is already partially effective. To staff's knowledge, no material economic costs have arisen as a result. This observation provides further support for the view that any marginal costs created by the proposal—which is intended to extend the effects of the stay-and-transfer provisions and the ISDA Protocol—are unlikely to be material.

Thus, the costs of the proposal are likely to be relatively small. These relatively small costs appear to be significantly outweighed by the substantial benefits that the rule would produce for the U.S. economy. Financial crises impose enormous costs on the real economy, so even small reductions in the probability or severity future financial crises create substantial economic benefits. The proposal would materially reduce the risk to the financial stability of the United States that could arise from the failure of a GSIB by enhancing the prospects for the orderly resolution of such a firm and would thereby materially reduce the probability and severity of financial crises in the future.

Moreover, the proposal would likely benefit the counterparties of a subsidiary of a failed GSIB by preventing the disorderly failure of the subsidiary and allowing it to continue to meet its obligations. Preventing the mass exercise of QFC default rights at the time the parent or other affiliate enters resolution proceedings makes it more likely that the subsidiaries or other affiliates will be able to meet their obligations to QFC counterparties. Moreover, the creditor protections permitted under the proposal would allow any counterparty that does not continue to receive payment under the QFC to exercise its default rights.

As discussed in detail above, this proposed rule would materially reduce the risk to the financial stability of the United States that could arise from the failure of a GSIB by enhancing the prospects for the orderly resolution of such a firm. By further safeguarding U.S. financial stability, the proposed rule would materially reduce the probability and severity of financial crises in the future. The proposed rule would therefore advance a key objective of the Dodd-Frank Act and help protect the American economy from the substantial costs associated with more frequent and severe financial crises.

Question 21: The Board invites comment on all aspects of this evaluation of costs and benefits.

V. Revisions to Certain Definitions in the Board's Capital and Liquidity Rules

The proposal would also amend several definitions in the Board's capital and liquidity rules to help ensure that the proposal would not have unintended effects for the treatment of covered entities' netting sets under those rules. The proposed amendments are similar to revisions that the Board and the OCC made in a 2014 interim final rule to prevent similar effects from foreign jurisdictions' special resolution regimes and firms' adherence to the 2014 ISDA Protocol.[134]

The Board's regulatory capital rules permit a banking organization to measure exposure from certain types of financial contracts on a net basis and recognize the risk-mitigating effect of financial collateral for other types of exposures, provided that the contracts are subject to a "qualifying master netting agreement" or agreement that provides for certain rights upon the default of a counterparty.[135] The Board has defined "qualifying master netting agreement" to mean a netting agreement that permits a banking organization to terminate, apply close-out netting, and promptly liquidate or set-off collateral upon an event of default of the counterparty, thereby reducing its counterparty exposure and market risks.[136] On the whole, measuring the amount of exposure of these contracts on a net basis, rather than on a gross basis, results in a lower measure of exposure and thus a lower capital requirement.

The current definition of "qualifying master netting agreement" recognizes that default rights may be stayed if the financial company is in resolution under the Dodd-Frank Act, the FDI Act, a substantially similar law applicable to government-sponsored enterprises, or a substantially similar foreign law, or where the agreement is subject by its terms to any of those laws. Accordingly, transactions conducted under netting agreements where default rights may be stayed in those circumstances may qualify for the favorable capital treatment described above. However, the current definition of "qualifying master netting agreement" does not recognize the restrictions that the proposal would impose on the QFCs of covered entities. Thus, a master netting agreement that is compliant with this proposal would not qualify as a qualifying master netting agreement. This would result in considerably higher capital and liquidity requirements for QFC counterparties of covered entities, which is not an intended effect of this proposal.

Accordingly, the proposal would amend the definition of "qualifying master netting agreement" so that a master netting agreement could qualify where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is consistent with the requirements of this proposal. This revision would maintain the existing treatment for these contracts under the Board's capital and liquidity rules by accounting for the restrictions that the proposal would place on default rights related to covered entities' QFCs. The Board does not believe that the disqualification of master netting agreements that would result in the absence of the proposed amendment would accurately reflect the risk posed by the affected QFCs. As discussed above, the implementation of consistent restrictions on default rights in GSIB QFCs would increase the prospects for the orderly resolution of a failed GSIB and thereby protect the financial stability of the United States.

The proposal would similarly revise certain other definitions in the regulatory capital rules to make analogous conforming changes designed to account for this proposal's restrictions and ensure that a banking organization may continue to recognize the risk-mitigating effects of financial collateral received in a secured lending transaction, repo-style transaction, or eligible margin loan for purposes of the Board's rules. Specifically, the proposal would revise the definitions of "collateral agreement," "eligible margin loan," and "repo-style transaction" to provide that a counterparty's default rights may be limited as required by this proposal without unintended effects.

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[134] *See* 12 CFR part 217.

[135] *See* 12 CFR part 217.

[136] *See* section 2 of the regulatory capital rules.

The rule establishing margin and capital requirements for covered swap entities (swap margin rule) defines the term "eligible master netting agreement" in a manner similar to the definition of "qualifying master netting agreement."[137] Thus, it may also be appropriate to amend the definition of "eligible master netting agreement" to account for the proposed restrictions on covered entities' QFCs. Because the Board issued the swap margin rule jointly with other U.S. regulatory agencies, however, the Board would consult with the other agencies before amending that rule's definition of "eligible master netting agreement."

Question 22: The Board invites comment on all aspects of the proposed amendments to the definitions of "qualifying master netting agreement," "collateral agreement," "eligible margin loan," and "repo-style transaction." Would the proposed amendments have the intended effect?

Question 23: Would it be appropriate to incorporate state law resolution regimes into these definitions (for example, state insurance law that provides similar stays of QFC default rights)?

VI. Regulatory Analysis

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain "collection of information" requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 through 3521). The Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The reporting requirements are found in sections 252.85(b) and 252.87(b). These information collection requirements would implement section 165 of the Dodd Frank Act, as described in the Abstract below. In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

The proposed rule would revise the Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY) (Reg YY; OMB No. 7100–0350). In addition, as permitted by the PRA, the Board proposes to extend for three years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY) (Reg YY; OMB No. 7100–0350).

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the Board's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section. A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by facsimile to 202–395–5806, Attention, Federal Reserve Desk Officer.

Proposed Revision, With Extension, of the Following Information Collection

Title of Information Collection: Reporting, Recordkeeping, and Disclosure Requirements Associated with Enhanced Prudential Standards (Regulation YY).

Agency Form Number: Reg YY.

OMB Control Number: 7100–0350.

Frequency of Response: Annual, semiannual, quarterly, one-time, and on occasion.

Affected Public: Businesses or other for-profit.

Respondents: State member banks, U.S. bank holding companies, savings and loan holding companies, nonbank financial companies, foreign banking organizations, U.S. intermediate holding companies, foreign saving and loan holding companies, and foreign nonbank financial companies supervised by the Board.

Abstract: Section 165 of the Dodd-Frank Act requires the Board to implement enhanced prudential standards for bank holding companies with total consolidated assets of $50 billion or more, including global systemically important foreign banking organizations with $50 billion or more in total consolidated assets. Section 165 of the Dodd-Frank Act also permits the Board to establish such other prudential standards for such banking organizations as the Board determines are appropriate.

Reporting Requirements

Section 252.85(b) of the proposed rule would require a covered banking entity to request the Board to approve as compliant with the requirements of section 252.84 of this subpart provisions of one or more forms of covered QFCs or amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions. Enhanced creditor protection conditions means a set of limited exemptions to the requirements of section 252.85(b) of this subpart that are different than those of paragraphs (e), (g), and (i) of section 252.84 of this subpart. A covered banking entity making a request must provide (1) an analysis of the proposal under each consideration of paragraph 252.85(d); (2) a written legal opinion verifying that proposed provisions or amendments would be valid and enforceable under applicable law of the relevant jurisdictions, including, in the case of proposed amendments, the validity and enforceability of the proposal to amend the covered QFCs; and (3) any additional information relevant to its approval that the Board requests.

Section 252.87(b) of the proposed rule would require each top-tier foreign banking organization that is or controls a covered company, as defined in section 243.2 the Board's Regulation QQ, to submit to the Board by January 1 of each calendar year (1) notice of whether the home country supervisor (or other appropriate home country regulatory authority) of the top-tier foreign banking organization has adopted standards consistent with the global methodology; and (2) whether the top-tier foreign banking organization or its home country supervisor has determined that the organization has the characteristics of a global systemically important banking organization under the global methodology.

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[137] 80 FR 74840, 74861–74862 (November 30, 2015).

Estimated Paperwork Burden for Proposed Revisions

Estimated Number of Respondents:
Section 252.85(b)—1 respondent.
Section 252.87(b)—22 respondents.
Estimated Burden per Response:
Section 252.85(b)—40 hours.
Section 252.87(b)—1 hour.

Current estimated annual burden for Reporting, Recordkeeping, and Disclosure Requirements Associated With Enhanced Prudential Standards (Regulation YY): 118,546 hours.

Proposed revisions estimated annual burden: 62 hours.

Total estimated annual burden: 118,608 hours.

B. Regulatory Flexibility Act: Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.,* requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[138] If so, the agency must prepare an initial and final regulatory flexibility analysis respecting the significant economic impact. Pursuant to section 605(b) of the RFA, the regulatory flexibility analysis otherwise required under sections 603 and 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap with, or conflict with the proposed rule.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. As discussed below, the proposed rule would not appear to have a significant impact on a substantial number of small entities, including small banking organizations. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis.

As discussed in detail above, the Board is issuing this proposed rule as part of its program to make GSIBs more resolvable in order to reduce the risk that their failure would pose to the financial stability of the United States, consistent with section 165 of the Dodd-Frank Act. In particular, the primary purpose of the proposal is to reduce the risk that the exercise of default rights by a failing GSIB's QFC counterparties would lead to a disorderly failure of the GSIB and would produce negative contagion and disruption that could destabilize the financial system. Section 165(b) of the Dodd-Frank Act provides the legal authority for this proposal.

The proposed rule would only apply to GSIBs, which are the largest, most systemically important banking organizations, and certain of their subsidiaries. More specifically, the proposed rule would apply to (a) any U.S. GSIB top-tier bank holding company, (b) any subsidiary of such a bank holding company that is not a covered bank,[139] and (c) the U.S. operations of any foreign GSIB with the exception of any covered bank. The Board estimates that the proposed rule would apply to approximately 29 banking organizations: Eight U.S. bank holding companies (*i.e.,* U.S. GSIBs) and approximately 21 foreign banking organizations (*i.e.* foreign GSIBs with U.S. operations). None of these banking organizations would qualify as a small banking entity for the purposes of the FRA. However, as discussed above, the proposed rule would also apply to each covered GSIB's subsidiary that meets the definition of a covered entity (regardless of the subsidiary's size) because an exemption for small entities would significantly impair the effectiveness of the proposed stay-and-transfer provisions and thereby undermine a key objective of the proposal: To reduce the execution risk of an orderly GSIB resolution. The Board anticipates that any small subsidiary of a GSIB that would be covered by this proposed rule would rely on its parent GSIB or a large subsidiary of that GSIB for reporting, recordkeeping, or similar compliance requirements and would not bear additional costs. Finally, the proposed rule does not appear to duplicate, overlap with, or conflict with any other federal regulation.

For the reasons stated above, the proposed rules would not appear to have a significant economic impact on a substantial number of small entities.

Question 24: The Board welcomes written comments regarding this initial regulatory flexibility analysis, and requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact. A final regulatory flexibility analysis will be conducted after consideration of comment received during the public comment period.

C. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

The Board has invited comment on these matters in other sections of this **SUPPLEMENTARY INFORMATION** section and will continue to consider them as part of the overall rulemaking process.

Question 25: The Board invites comment on this section, including any additional comments that will inform the Board's consideration of the requirements of RCDRIA.

D. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the U.S. banking agencies to use plain language in proposed and final rulemakings.[140] The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language in this proposal.

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[138] A banking organization is generally considered to be a small banking entity for the purposes of the RFA if it has assets less than or equal to $175 million. *See also* 13 CFR 121.1302(a)(6) (noting factors that the Small Business Administration considers in determining whether an entity qualifies as a small business, including receipts, employees, and other measures of its domestic and foreign affiliates).

[139] The term "covered bank" would be defined to include certain entities, such as certain national banks, that are supervised by the OCC.

[140] 12 U.S.C. 4809(a).

Question 26: Has the Board organized the proposal in a clear way? If not, how could the proposal organized more clearly?

Question 27: Are the requirements of the proposed rule clearly stated? If not, how could they be stated more clearly?

Question 28: Does the proposal contain unclear technical language or jargon? If so, which language requires clarification?

Question 29: Would a different format (such as a different grouping and ordering of sections, a different use of section headings, or a different organization of paragraphs) make the regulation easier to understand? If so, what changes would make the proposal clearer?

Question 30: What else could the Board do to make the proposal clearer and easier to understand?

List of Subjects in 12 CFR Parts 217, 249, and 252

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Chapter II

Authority and Issuance

For the reasons stated in the SUPPLEMENTARY INFORMATION, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR parts 217, 249, and 252 as follows:

PART 217—CAPITAL ADEQUACY OF BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND STATE MEMBER BANKS (REGULATION Q).

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

■ 2. Section 217.2 is amended by:

■ a. Revising the definitions of "collateral agreement" and "qualifying master netting agreement";

■ b. Revising paragraph (1)(iii) of the definition of "eligible margin loan";

■ c. Republishing the introductory text of the definition of "repo-style transaction"; and

■ d. Revising paragraph 3(ii)(A) of the definition of "repo-style transaction".

The revisions are set forth below:

§ 217.2 Definitions.

* * * * *

Collateral agreement means a legal contract that specifies the time when, and circumstances under which, a counterparty is required to pledge collateral to a Board-regulated institution for a single financial contract or for all financial contracts in a netting set and confers upon the Board-regulated institution a perfected, first-priority security interest (notwithstanding the prior security interest of any custodial agent), or the legal equivalent thereof, in the collateral posted by the counterparty under the agreement. This security interest must provide the Board-regulated institution with a right to close-out the financial positions and liquidate the collateral upon an event of default of, or failure to perform by, the counterparty under the collateral agreement. A contract would not satisfy this requirement if the Board-regulated institution's exercise of rights under the agreement may be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(1) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[4] to the U.S. laws referenced in this paragraph (1) in order to facilitate the orderly resolution of the defaulting counterparty;

(2) Where the agreement is subject by its terms to any of the laws referenced in paragraph (1) of this definition; or

(3) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of subpart I of the Board's Regulation YY or any similar requirements of another U.S. federal banking agency, as applicable.

* * * * *

Eligible margin loan means:

(1) * * *

(iii) The extension of credit is conducted under an agreement that provides the Board-regulated institution the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,[5] or laws of foreign jurisdictions that are substantially similar[6] to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of subpart I of the Board's Regulation YY or any similar requirements of another U.S. federal banking agency, as applicable.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the Board-regulated institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit

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[4] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

[5] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute "securities contracts" under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the Federal Reserve Board's Regulation EE (12 CFR part 231).

[6] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[7] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition; or

(iii) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of subpart I of the Board's Regulation YY or any similar requirements of another U.S. federal banking agency, as applicable;

* * * * *

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the Board-regulated institution acts as agent for a customer and indemnifies the customer against loss, provided that:

(3) * * *

(ii) * * *

(A) The transaction is executed under an agreement that provides the Board-regulated institution the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than in receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[8] to the U.S. laws referenced in this paragraph (3)(ii)(a) in order to facilitate the orderly resolution of the defaulting counterparty; or where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of subpart I of the Board's Regulation YY or any similar requirements of another U.S. federal banking agency, as applicable;

or

* * * * *

PART 249—LIQUIDITY RISK MEASUREMENT STANDARDS (REGULATION WW)

■ 3. The authority citation for part 249 continues to read as follows:

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1467a(g)(1), 1818, 1828, 1831p–1, 1831o–1, 1844(b), 5365, 5366, 5368.

■ 4. Section 249.3 is amended by revising the definition of "qualifying master netting agreement" to read as follows:

§ 249.3 Definitions.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

(1) The agreement creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following any stay permitted by paragraph (2) of this definition, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty;

(2) The agreement provides the Board-regulated institution the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(i) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[1] to the U.S. laws referenced in this paragraph (2)(i) in order to facilitate the orderly resolution of the defaulting counterparty;

(ii) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i) of this definition; or

(iii) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of subpart I of the Board's Regulation YY or any similar requirements of another U.S. federal banking agency, as applicable;

* * * * *

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 5. The authority citation for part 252 is revised to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a(g), 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 1844(b), 3904, 3906–3909, 4808, 5361, 5365, 5366, 5367, 5368, 5371.

■ 6. Add subpart I to read as follows:

Subpart I—Requirements for Qualified Financial Contracts of Global Systemically Important Banking Organizations

Sec.

252.81 Definitions.
252.82 Applicability.
252.83 U.S. Special resolution regimes.
252.84 Insolvency proceedings.
252.85 Approval of enhanced creditor protection conditions.
252.86 Foreign bank multi-branch master agreements.
252.87 Identification of global systemically important foreign banking organizations.
252.88 Exclusion of certain QFCs.

Subpart I—Requirements for Qualified Financial Contracts of Global Systemically Important Banking Organizations

§ 252.81 Definitions.

Central counterparty (CCP) has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

Chapter 11 proceeding means a proceeding under Chapter 11 of Title 11, United States Code (11 U.S.C. 1101–74.).

Credit enhancement means a QFC of the type set forth in §§ 210(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI)) or a credit enhancement that the Federal Deposit Insurance Corporation determines by regulation is a QFC pursuant to section 210(c)(8)(D)(i) of Title II of the act (12 U.S.C. 5390(c)(8)(D)(i)).

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[7] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

[8] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

[1] The Board expects to evaluate jointly with the OCC and Federal Deposit Insurance Corporation whether foreign special resolution regimes meet the requirements of this paragraph.

Covered bank means a national bank, Federal savings association, federal branch, or federal agency.

Default right (1) Means, with respect to a QFC, any

(i) Right of a party, whether contractual or otherwise (including, without limitation, rights incorporated by reference to any other contract, agreement, or document, and rights afforded by statute, civil code, regulation, and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, or modify the obligations of a party thereunder, or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral, or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure;

(2) With respect to section 252.84, does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

FDI Act proceeding means a proceeding in which the Federal Deposit Insurance Corporation is appointed as conservator or receiver under section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821).

FDI Act stay period means, in connection with an FDI Act proceeding, the period of time during which a party to a QFC with a party that is subject to an FDI Act proceeding may not exercise any right that the party that is not subject to an FDI Act proceeding has to terminate, liquidate, or net such QFC, in accordance with section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) and any implementing regulations.

Master agreement means a QFC of the type set forth in section 210(c)(8)(D)(ii)(XI), (iii)(IX), (iv)(IV), (v)(V), or (vi)(V) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)(ii)(XI), (iii)(IX), (iv)(IV), (v)(V), or (vi)(V)) or a master agreement that the Federal Deposit Insurance Corporation determines by regulation is a QFC pursuant to section 210(c)(8)(D)(i) of Title II of the act (12 U.S.C. 5390(c)(8)(D)(i)).

Qualified financial contract (QFC) has the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5390(c)(8)(D)).

U.S. special resolution regimes means the Federal Deposit Insurance Act (12 U.S.C. 1811–1835a) and regulations promulgated thereunder and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381–5394) and regulations promulgated thereunder.

§ 252.82 Applicability.

(a) *Scope of firms.* This subpart applies to a "covered entity," which is

(1) A bank holding company that is identified as a global systemically important BHC pursuant to 12 CFR 217.402;

(2) A subsidiary of a company identified in paragraph (a)(1) of this section (other than a subsidiary that is a covered bank); or

(3) A U.S. subsidiary, U.S. branch, or U.S. agency of a global systemically important foreign banking organization (other than a U.S. subsidiary, U.S. branch, or U.S. agency that is a covered bank, section 2(h)(2) company or a DPC branch subsidiary).

(b) *Initial applicability of requirements for covered QFCs.* A covered entity must comply with the requirements of §§ 252.83 and 252.84 beginning on the later of

(1) The first day of the calendar quarter immediately following 365 days (1 year) after becoming a covered entity; or

(2) The date this subpart first becomes effective.

(c) *Rule of construction.* For purposes of this subpart, the exercise of a default right with respect to a covered QFC includes the automatic or deemed exercise of the default right pursuant to the terms of the QFC or other arrangement.

§ 252.83 U.S. Special Resolution Regimes.

(a) *QFCs required to be conformed.* (1) A covered entity must ensure that each covered QFC conforms to the requirements of this section 252.83.

(2) For purposes of this § 252.83, a covered QFC means a QFC that the covered entity:

(i) Enters, executes, or otherwise becomes a party to; or

(ii) Entered, executed, or otherwise became a party to before the date this subpart first becomes effective, if the covered entity or any affiliate that is a covered entity or a covered bank also enters, executes, or otherwise becomes a party to a QFC with the same person or affiliate of the same person on or after the date this subpart first becomes effective.

(3) To the extent that the covered entity is acting as agent with respect to a QFC, the requirements of this section apply to the extent the transfer of the QFC relates to the covered entity or the default rights relate to the covered entity or an affiliate of the covered entity.

(b) *Provisions required.* A covered QFC must explicitly provide that

(1) The transfer of the covered QFC (and any interest and obligation in or under, and any property securing, the covered QFC) from the covered entity will be effective to the same extent as the transfer would be effective under the U.S. special resolution regimes if the covered QFC (and any interest and obligation in or under, and any property securing, the covered QFC) were governed by the laws of the United States or a state of the United States and the covered entity were under the U.S. special resolution regime; and

(2) Default rights with respect to the covered QFC that may be exercised against the covered entity are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regimes if the covered QFC was governed by the laws of the United States or a state of the United States and the covered entity were under the U.S. special resolution regime.

(c) *Relevance of creditor protection provisions.* The requirements of this section apply notwithstanding paragraphs (e), (g), and (i) of § 252.84.

§ 252.84 Insolvency Proceedings.

(a) *QFCs required to be conformed.* (1) A covered entity must ensure that each covered QFC conforms to the requirements of this § 252.84.

(2) For purposes of this § 252.84, a covered QFC has the same definition as in paragraph (a)(2) of § 252.83.

(3) To the extent that the covered entity is acting as agent with respect to

a QFC, the requirements of this section apply to the extent the transfer of the QFC relates to the covered entity or the default rights relate to an affiliate of the covered entity.

(b) *General Prohibitions.*

(1) A covered QFC may not permit the exercise of any default right with respect to the covered QFC that is related, directly or indirectly, to an affiliate of the direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding.

(2) A covered QFC may not prohibit the transfer of a covered affiliate credit enhancement, any interest or obligation in or under the covered affiliate credit enhancement, or any property securing the covered affiliate credit enhancement to a transferee upon an affiliate of the direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding unless the transfer would result in the supported party being the beneficiary of the credit enhancement in violation of any law applicable to the supported party.

(c) *Definitions relevant to the general prohibitions—*

(1) *Direct party.* Direct party means a covered entity, or covered bank referenced in paragraph (a) of § 252.82, that is a party to the direct QFC.

(2) *Direct QFC.* Direct QFC means a QFC that is not a credit enhancement, *provided that,* for a QFC that is a master agreement that includes an affiliate credit enhancement as a supplement to the master agreement, the direct QFC does not include the affiliate credit enhancement.

(3) *Affiliate credit enhancement.* Affiliate credit enhancement means a credit enhancement that is provided by an affiliate of a party to the direct QFC that the credit enhancement supports.

(d) *Treatment of agent transactions.* With respect to a QFC that is a covered QFC for a covered entity solely because the covered entity is acting as agent under the QFC, the covered entity is the direct party.

(e) *General creditor protections.* Notwithstanding paragraph (b) of this section, a covered direct QFC and covered affiliate credit enhancement that supports the covered direct QFC may permit the exercise of a default right with respect to the covered QFC that arises as a result of

(1) The direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership, conservatorship, or resolution under the FDI Act, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (e)(1) in order to facilitate the orderly resolution of the direct party;

(2) The direct party not satisfying a payment or delivery obligation pursuant to the covered QFC or another contract between the same parties that gives rise to a default right in the covered QFC; or

(3) The covered affiliate support provider or transferee not satisfying a payment or delivery obligation pursuant to a covered affiliate credit enhancement that supports the covered direct QFC.

(f) *Definitions relevant to the general creditor protections—*

(1) *Covered direct QFC.* Covered direct QFC means a direct QFC to which a covered entity, or covered bank referenced in paragraph (a) of § 252.82, is a party.

(2) *Covered affiliate credit enhancement.* Covered affiliate credit enhancement means an affiliate credit enhancement in which a covered entity, or covered bank referenced in paragraph (a) of § 252.82, is the obligor of the credit enhancement.

(3) *Covered affiliate support provider.* Covered affiliate support provider means, with respect to a covered affiliate credit enhancement, the affiliate of the direct party that is obligated under the covered affiliate credit enhancement and is not a transferee.

(4) *Supported party.* Supported party means, with respect to a covered affiliate credit enhancement and the direct QFC that the covered affiliate credit enhancement supports, a party that is a beneficiary of the covered affiliate support provider's obligation(s) under the covered affiliate credit enhancement.

(g) *Additional creditor protections for supported QFCs.* Notwithstanding paragraph (b) of this section, with respect to a covered direct QFC that is supported by a covered affiliate credit enhancement, the covered direct QFC and the covered affiliate credit enhancement may permit the exercise of a default right that is related, directly or indirectly, to the covered affiliate support provider after the stay period if:

(1) The covered affiliate support provider that remains obligated under the covered affiliate credit enhancement becomes subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a Chapter 11 proceeding;

(2) Subject to paragraph (i) of this section, the transferee, if any, becomes subject to a receivership, insolvency, liquidation, resolution, or similar proceeding;

(3) The covered affiliate support provider does not remain, and a transferee does not become, obligated to the same, or substantially similar, extent as the covered affiliate support provider was obligated immediately prior to entering the receivership, insolvency, liquidation, resolution, or similar proceeding with respect to:

(i) The covered affiliate credit enhancement;

(ii) All other covered affiliate credit enhancements provided by the covered affiliate support provider in support of other covered direct QFCs between the direct party and the supported party under the covered affiliate credit enhancement referenced in paragraph (g)(3)(i) of this section; and

(iii) All covered affiliate credit enhancements provided by the covered affiliate support provider in support of covered direct QFCs between the direct party and affiliates of the supported party referenced in paragraph (g)(3)(ii) of this section; or

(4) In the case of a transfer of the covered affiliate credit enhancement to a transferee,

(i) All of the ownership interests of the direct party directly or indirectly held by the covered affiliate support provider are not transferred to the transferee; or

(ii) Reasonable assurance has not been provided that all or substantially all of the assets of the covered affiliate support provider (or net proceeds therefrom), excluding any assets reserved for the payment of costs and expenses of administration in the receivership, insolvency, liquidation, resolution, or similar proceeding, will be transferred or sold to the transferee in a timely manner.

(h) *Definitions relevant to the additional creditor protections for supported QFCs—*

(1) *Stay period.* Stay period means, with respect to a receivership, insolvency, liquidation, resolution, or similar proceeding, the period of time beginning on the commencement of the proceeding and ending at the later of 5:00 p.m. (eastern time) on the business day following the date of the commencement of the proceeding and 48 hours after the commencement of the proceeding.

(2) *Business day.* Business day means a day on which commercial banks in the jurisdiction the proceeding is commenced are open for general business (including dealings in foreign exchange and foreign currency deposits).

(3) *Transferee.* Transferee means a person to whom a covered affiliate credit enhancement is transferred upon

the covered affiliate support provider entering a receivership, insolvency, liquidation, resolution, or similar proceeding or thereafter as part of the restructuring or reorganization involving the covered affiliate support provider.

(i) *Creditor protections related to FDI Act proceedings.* Notwithstanding paragraph (b) of this section, with respect to a covered direct QFC that is supported by a covered affiliate credit enhancement, the covered direct QFC and the covered affiliate credit enhancement may permit the exercise of a default right that is related, directly or indirectly, to the covered affiliate support provider becoming subject to FDI Act proceedings

(1) After the FDI Act stay period, if the covered affiliate credit enhancement is not transferred pursuant to 12 U.S.C. 1821(e)(9)–(e)(10) and any regulations promulgated thereunder; or

(2) During the FDI Act stay period, if the default right may only be exercised so as to permit the supported party under the covered affiliate credit enhancement to suspend performance with respect to the supported party's obligations under the covered direct QFC to the same extent as the supported party would be entitled to do if the covered direct QFC were with the covered affiliate support provider and were treated in the same manner as the covered affiliate credit enhancement.

(j) *Prohibited terminations.* A covered QFC must require, after an affiliate of the direct party has become subject to a receivership, insolvency, liquidation, resolution, or similar proceeding,

(1) The party seeking to exercise a default right to bear the burden of proof that the exercise is permitted under the covered QFC; and

(2) Clear and convincing evidence or a similar or higher burden of proof to exercise a default right.

§ 252.85 Approval of Enhanced Creditor Protection Conditions.

(a) *Protocol compliance.* Notwithstanding paragraph (b) of section 252.4, a covered QFC may permit the exercise of a default right with respect to the covered QFC if the covered QFC has been amended by the ISDA 2015 Universal Resolution Stay Protocol, including the Securities Financing Transaction Annex and Other Agreements Annex, published by the International Swaps and Derivatives Association, Inc., as of May 3, 2016, and minor or technical amendments thereto.

(b) *Proposal of enhanced creditor protection conditions.* (1) A covered entity may request that the Board approve as compliant with the requirements of § 252.84 proposed provisions of one or more forms of covered QFCs, or proposed amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions.

(2) Enhanced creditor protection conditions means a set of limited exemptions to the requirements of § 252.84(b) of this subpart that are different than that of paragraphs (e), (g), and (i) of § 252.84.

(3) A covered entity making a request under paragraph (b)(1) of this section must provide

(i) An analysis of the proposal that addresses each consideration in paragraph (d) of this section;

(ii) A written legal opinion verifying that proposed provisions or amendments would be valid and enforceable under applicable law of the relevant jurisdictions, including, in the case of proposed amendments, the validity and enforceability of the proposal to amend the covered QFCs; and

(iii) Any other relevant information that the Board requests.

(c) *Board approval.* The Board may approve, subject to any conditions or commitments the Board may set, a proposal by a covered entity under paragraph (b) of this section if the proposal, as compared to a covered QFC that contains only the limited exemptions in paragraphs of (e), (g), and (i) of § 252.84 or that is amended as provided under paragraph (a) of this section, would prevent or mitigate risks to the financial stability of the United States that could arise from the failure of a global systemically important BHC, a global systemically important foreign banking organization, or the subsidiaries of either and would protect the safety and soundness of bank holding companies and state member banks to at least the same extent.

(d) *Considerations.* In reviewing a proposal under this section, the Board may consider all facts and circumstances related to the proposal, including:

(1) Whether, and the extent to which, the proposal would reduce the resiliency of such covered entities during distress or increase the impact on U.S. financial stability were one or more of the covered entities to fail;

(2) Whether, and the extent to which, the proposal would materially decrease the ability of a covered entity, or an affiliate of a covered entity, to be resolved in a rapid and orderly manner in the event of the financial distress or failure of the entity that is required to submit a resolution plan;

(3) Whether, and the extent to which, the set of conditions or the mechanism in which they are applied facilitates, on an industry-wide basis, contractual modifications to remove impediments to resolution and increase market certainty, transparency, and equitable treatment with respect to the default rights of non-defaulting parties to a covered QFC;

(4) Whether, and the extent to which, the proposal applies to existing and future transactions;

(5) Whether, and the extent to which, the proposal would apply to multiple forms of QFCs or multiple covered entities;

(6) Whether the proposal would permit a party to a covered QFC that is within the scope of the proposal to adhere to the proposal with respect to only one or a subset of covered entities;

(7) With respect to a supported party, the degree of assurance the proposal provides to the supported party that the material payment and delivery obligations of the covered affiliate credit enhancement and the covered direct QFC it supports will continue to be performed after the covered affiliate support provider enters a receivership, insolvency, liquidation, resolution, or similar proceeding;

(8) The presence, nature, and extent of any provisions that require a covered affiliate support provider or transferee to meet conditions other than material payment or delivery obligations to its creditors;

(9) The extent to which the supported party's overall credit risk to the direct party may increase if the enhanced creditor protection conditions are not met and the likelihood that the supported party's credit risk to the direct party would decrease or remain the same if the enhanced creditor protection conditions are met; and

(10) Whether the proposal provides the counterparty with additional default rights or other rights.

§ 252.86 Foreign Bank Multi-branch Master Agreements.

(a) *Treatment of foreign bank multi-branch master agreements.* With respect to a U.S. branch or U.S. agency of a global systemically important foreign banking organization, a foreign bank multi-branch master agreement that is a covered QFC solely because the master agreement permits agreements or transactions that are QFCs to be entered into at one or more U.S. branches or U.S. agencies of the global systemically important foreign banking organization will be considered a covered QFC for purposes of this subpart only with respect to such agreements or transactions booked at such U.S. branches and U.S. agencies or for which a payment or delivery may be made at such U.S. branches or U.S. agencies.

(b) *Definition of foreign bank multi-branch master agreements.* A foreign bank multi-branch master agreement means a master agreement that permits a U.S. branch or U.S. agency and another place of business of a foreign bank that is outside the United States to enter transactions under the agreement.

§ 252.87 Identification of Global Systemically Important Foreign Banking Organizations.

(a) For purposes of this part, a top-tier foreign banking organization that is or controls a covered company (as defined at 12 CFR 243.2(f)) is a global systemically important foreign banking organization if any of the following conditions is met:

(1) The top-tier foreign banking organization determines, pursuant to paragraph (c) of this section, that the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology; or

(2) The Board, using information available to the Board, determines:

(i) That the top-tier foreign banking organization would be a global systemically important banking organization under the global methodology;

(ii) That the top-tier foreign banking organization, if it were subject to the Board's Regulation Q, would be identified as a global systemically important BHC under § 217.402 of the Board's Regulation Q; or

(iii) That any U.S. intermediate holding company controlled by the top-tier foreign banking organization, if the U.S. intermediate holding company is or were subject to § 217.402 of the Board's Regulation Q, is or would be identified as a global systemically important BHC.

(b) Each top-tier foreign banking organization that is or controls a covered company (as defined at 12 CFR 243.2(f)) shall submit to the Board by January 1 of each calendar year:

(1) Notice of whether the home country supervisor (or other appropriate home country regulatory authority) of the top-tier foreign banking organization has adopted standards consistent with the global methodology; and

(2) Whether the top-tier foreign banking organization or its home country supervisor has determined that the organization has the characteristics of a global systemically important banking organization under the global methodology.

(c) A top-tier foreign banking organization that prepares or reports for any purpose the indicator amounts necessary to determine whether the top-tier foreign banking organization is a global systemically important banking organization under the global methodology must use the data to determine whether the top-tier foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology.

(d) For purposes of this section:

(1) Global methodology means the assessment methodology and the higher loss absorbency requirement for global systemically important banks issued by the Basel Committee on Banking Supervision, as updated from time to time;

(2) Global systemically important foreign banking organization means a global systemically important bank, as such term is defined in the global methodology;

(3) Home country means, with respect to a foreign banking organization, the country in which the foreign banking organization is chartered or incorporated; and

(4) Top-tier foreign banking organization means, with respect to a foreign banking organization, the top-tier foreign banking organization or, alternatively, a subsidiary of the top-tier foreign banking organization designated by the Board.

§ 252.88 Exclusion of Certain QFCs.

(a) *Exclusion of CCP-cleared QFCs.* A covered entity is not required to conform a covered QFC to which a CCP is party to the requirements of §§ 252.83 or 252.84.

(b) *Exclusion of covered bank QFCs.* A covered entity is not required to conform a covered QFC to the requirements of §§ 252.83 or 252.84 to the extent that a covered bank is required to conform the covered QFC to similar requirements of the Office of the Comptroller of the Currency if the QFC is either a direct QFC to which a covered bank is a direct party or an affiliate credit enhancement to which a covered bank is the obligor.

By order of the Board of Governors of the Federal Reserve System, May 3, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–11209 Filed 5–10–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6616; Directorate Identifier 2016–CE–004–AD]

RIN 2120–AA64

Airworthiness Directives; Rosemount Aerospace, Inc. Pitot Probes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Rosemount Aerospace Model 851AK pitot probes that were repaired by CSI Aerospace, Inc. that are installed on airplanes. This proposed AD was prompted by a report that certain pitot probes are indicating the wrong airspeed during flight in icing conditions. This proposed AD would require inspecting the airplane to determine the number of affected pitot probes installed and replacing the affected pitot probes. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 27, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6616; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jonathan Kim, Aerospace Engineer, Fort Worth Airplane Certification Office (ACO), FAA, 10101 Hillwood Parkway, Fort Worth, Texas 76177–1524; telephone: (817) 222–5131; fax: (817) 222–5245; email: *jonathan.kim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6616; Directorate Identifier 2016–CE–004–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received a report about erroneous airspeed data being transmitted from multiple Rosemount Aerospace Model 851AK pitot probes on a Boeing Aircraft Company Model B717 airplane when flying in icing conditions.

Investigation revealed that the pitot probes had been repaired by CSI Aerospace, Inc. between January 2013 and July 2014. During the investigation, it was determined that the repaired pitot probes had constricted openings, which was caused by migration of the silver brazing material. Further investigation revealed that the brazing material migrated because the heater was not properly located during the repair process. This condition, if not corrected, could result in incorrect airspeed indications during icing conditions, which could lead to loss of control. Due to design redundancy, this is only applicable if more than one deficient probe is installed.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require inspecting the airplane to determine the number of affected pitot probes installed and replacing the affected pitot probes if more than one is installed.

Costs of Compliance

We estimate that this proposed AD affects 679 products installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect to determine the number of defective pitot probes installed on the airplane.	1 work-hour × $85 per hour = $85	N/A	N/A	$57,715

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace defective pitot probe	1 work-hour × $85 per hour = $85	$6,750	$6,835

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Rosemount Aerospace, Inc.: Docket No. FAA–2016–6616; Directorate Identifier 2016–CE–004–AD.

(a) Comments Due Date

We must receive comments by June 27, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rosemount Aerospace, Inc. Model 851AK pitot probes that were repaired by CSI Aerospace Inc. and have a serial number listed in paragraph (c)(1) of this AD that are known to be installed on but not limited to the airplanes listed in paragraph (c)(2) of this AD.

(1) 53257, 61568, 68168, 69913, 69953, 71802, 71820, 73010, 73406, 75549, 75555, 80491, 83809, 84200, 84495, 84911, 84922, 85317, 85731, 87225, 87234, 87235, 87241, 87272, 87512, 87551, 87909, 88912, 90538, 91606, 93291, 93292, 93293, 93305, 93941, 93948, 93960, 94258, 94304, 94559, 94814, 94819, 95150, 95849, 97405, 99498, 99509, 100105, 100111, 100127, 100313, 100741, 101374, 101500, 102054, 102309, 102502, 104604, 106134, 106139, 106381, 106905, 107251, 107406, 107450, 107887, 108174, 108302, 108858, 108859, 108967, 108970, 109119, 109122, 109124, 109128, 109393, 109394, 109467, 109474, 109488, 109521, 109524, 109537, 109577, 109795, 109798, 109799, 109810, 109946, 109954, 109958, 109962, 109996, 110323, 110324, 110327, 110338, 110611, 110626, 110880, 110895, 110956, 111061, 111066, 111315, 111320, 111432, 111561, 111571, 111578, 111802, 111807, 112229, 112280, 112497, 112646, 112657, 112677, 112779, 112781, 112783, 112979, 112993, 113025, 113026, 113129, 113151, 113382, 113721, 113758, 113837, 113838, 113843, 113845, 113920, 113934, 114130, 114147, 114152, 114157, 114223, 114376, 114572, 114813, 114869, 114959, 114962A, 114966, 115428, 115713, 116249, 116253, 116255, 116271, 116424, 116557, 116734, 116792, 116994, 117022, 117144, 117310, 117412, 117414, 117426, 117427, 117428, 117587, 117961, 118111, 118234, 118331, 118637, 118639, 118770, 118938, 119115, 119281, 119290, 119414, 119441, 119593, 119694, 119695, 119737, 119852, 120456, 120461, 120728, 120823, 120825, 120826, 120829, 121040, 121041, 121110, 121116, 121145, 121172, 121320, 121322, 121524, 121834, 121852, 122662, 122934, 122935, 123286, 123289, 123330, 123745, 123746, 123753, 123767, 124144, 124385, 124390, 124396, 124890, 125016, 125021, 125077, 125163, 125174, 126785, 127449, 127894, 127899, 128302, 128307, 129503, 130371, 130377, 130688, 131422, 131423, 131752, 132065, 132067, 132297, 132825, 133103, 133161, 133220, 133291, 133310, 133394, 133396, 133512, 133521, 134102, 134403, 134535, 134537, 134639, 134675, 134681, 135136, 135234, 135246, 135250, 135554, 135561, 135568, 135735, 135743, 136075, 136208, 137049, 137398, 137543, 137544, 137642, 139076, 139081, 139433, 139444, 139691, 139694, 139759, 139763, 139971, 139976, 140188, 140565, 140643, 140649, 140650, 141161, 141356, 141362, 141497, 141501, 141605, 141607, 142426, 142765, 142774, 142775, 143405, 143409, 143411, 143418, 143816, 143818, 143988, 143992, 143999, 144591, 144814, 144816, 144976, 146116, 146835, 147421, 148524, 148765, 148777, 149460, 149464, 149510, 149941, 150206, 150211, 150212, 150214, 150542, 150725, 151086, 151095, 151493, 152097, 152819, 152922, 152969, 152974, 152981, 153232, 153453, 153625, 153628, 153635, 153641, 153956, 153962, 153966, 153984, 154007, 154156, 154704, 154721, 154738, 154741, 155003, 155042, 155045, 155238, 155278, 155517, 156022, 156025, 156222, 156526, 156529, 156672, 157023, 157137, 157143, 158393, 158790, 158797, 159033, 159036, 159413, 159440, 159891, 160000, 160002, 160456, 160459, 160463, 160466, 160468, 161137, 161139, 161159, 161177, 161184, 161185, 161363, 161364, 161366, 162376, 162384, 162674, 162682, 162685, 162688, 163176, 163178, 163181, 163557, 163559, 163602, 164279, 164746, 164750, 164907, 164908, 165135, 165259, 165459, 165805, 166235, 166324, 166325, 166326, 166331, 166477, 166481, 166608, 166671, 166673, 166892, 167030, 167035, 167037, 167182, 167341, 167556, 167559, 167705, 167707, 167709, 167763, 167764, 167765, 167766, 167811, 195627, 195628, 195706, 195707, 195710, 195796, 195833, 195876, 196041, 196042, 196045, 196137, 196234, 196397, 196400, 196401, 196403, 196498, 196500, 196761, 197097, 197140, 197143, 197238, 197657, 197874, 198528, 198687, 198775, 198788, 198872, 199034, 199042, 199187, 199441, 199613, 199616, 199669, 200293, 200324, 200534, 200535, 200538, 200737, 200738, 200793, 200830, 200834, 200872, 201576, 201685, 201733, 201892, 201893, 201964, 202053, 202305, 202306, 202469, 202471, 202472, 202596, 202625, 202633, 202760, 202879, 202901, 203010, 203016, 204629, 204665, 204714, 204820, 204821, 204822, 205249, 205253, 205329, 205335, 205526, 205527, 205529, 205700, 205882, 205967, 206273, 206406, 206436, 206441, 206646, 207019, 207020, 207021, 207364, 207369, 207683, 207684, 207837, 207849, 207850, 208206, 208381, 208394, 208396, 208543, 209148, 209698, 209704, 209707, 212176, 212525, 212697, 212700, 213952, 213953, 214085, 214089, 214144, 214795, 214803, 215392, 215476, 216214, 216509, 216951, 216955, 216957, 217368, 217369, 217382, 217441, 217708, 217805, 218112, 218610, 218613, 218757, 218761, 218958, 218965, 218967, 218970, 218976, 219226, 219228, 219233, 219236, 219411, 219418, 219832, 219840, 220990, 220991, 221197, 221286, 221635, 224540, 224700, 224701, 224704, 224707, 224876, 225257, 225262, 225586, 225910, 225974, 226133, 226136, 226465, 226466, 226467, 227159, 227174, 227836, 227837, 229277, 230190, 230191, 230192, 230193, 231082, 232015, 232681, 232684, 234534, 235621, 235628, 238097, 239755, 239760, 239956, 242109, 242998, 243350, 243351, 245230, 246792, 246851, 247007, 247302, 250747, 256327, 258614, 258861, 258865, 260508, 262743, 262744, 263643, 263644, 263645, 263651, 263700, 264117, 264119, 264122, 264123, 264125, 264193, 264738, 265208, 265210, 265655, 265656, 265657, 265658, 268055, 268562, 268564, 268565, 268566, 272372, 272592, 275276, 275663, 280433, 280435, and 296902.

(2) DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, MD–90–30, and 717–200.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 3414, Airspeed/Mach Indicator.

(e) Unsafe Condition

This AD was prompted by a report that the pitot probes are indicating the wrong airspeed during flight in icing conditions. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

Do the actions in paragraphs (g) and (h)(1) through (h)(3) of this AD. If paragraphs (g), (h)(1), and (h)(2) of this AD have already been done before the effective date of this AD, then only paragraph (h)(3) of this AD applies.

(g) Determine Number of Affected Pitot Probes Installed

Within 30 days after the effective date of this AD, inspect the airplane to determine the number of pitot probes identified in paragraph (c)(1) of this AD that are installed on the airplane.

(h) Replace Affected Pitot Probes

(1) After the inspection required in paragraph (g) of this AD, if it is determined that more than one pitot probe identified in paragraph (c)(1) of this AD is installed on the airplane, within the next 2 months after the effective date of this AD, replace the pitot probes that are listed with pitot probes that do not have a serial number listed in paragraph (c)(1) of this AD so that no more than one pitot probe identified in paragraph (c)(1) is installed on any aircraft simultaneously.

(2) After the inspection required in paragraph (g) of this AD, if it is determined that no more than one pitot probe identified in paragraph (c)(1) of this AD is installed on the airplane, no further action is required

except for the ongoing requirement in paragraph (h)(3) of this AD.

(3) As of the effective date of this, do not install on any airplane a pitot probe having a serial number listed in paragraph (c)(1) of this AD, unless it has been repaired by CSI and has a date of August 1, 2014, or later.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

For more information about this AD, contact Jonathan Kim, Aerospace Engineer, Fort Worth ACO, FAA, 10101 Hillwood Parkway, Fort Worth, Texas 76177–1524; telephone: (817) 222–5131; fax: (817) 222–5245; email: *jonathan.kim@faa.gov*.

Issued in Kansas City, Missouri, on May 4, 2016.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–10930 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6427; Directorate Identifier 2015–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2007–11–13, which applies to all The Boeing Company Model 717–200 airplanes. AD 2007–11–13 currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate new removal limits for certain components of the flap system and to reduce the inspection interval s for fatigue cracking of principal structural elements (PSE). Since we issued AD 2007–11–13, a new Airworthiness Limitations Instructions (ALI) revision was released that incorporates nondestructive inspection (NDI) techniques and reduced repetitive inspection intervals for three PSEs. We have determined that these reduced intervals are necessary to address the unsafe condition. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate reduced intervals for the inspections for three PSEs and add NDI techniques to the inspection process. We are proposing this AD to detect and correct fatigue cracking of certain PSEs. Such cracking could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by June 27, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6427; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6427; Directorate Identifier 2015–NM–200–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On June 29, 2007, we issued AD 2007–11–13, Amendment 39–15070 (72 FR 29237, May 25, 2007) ("AD 2007–11–13"), for all The Boeing Company Model 717–200 airplanes. AD 2007–11–13 requires revising the ALS of the Instructions for Continued Airworthiness to incorporate new removal limits for certain components of the flap system and to reduce the inspection intervals for fatigue cracking of PSEs. AD 2007–11–13 resulted from a revised damage tolerance analysis. We issued AD 2007–11–13 to detect and correct fatigue cracking of certain PSEs. Such cracking could adversely affect the structural integrity of the airplane.

Actions Since AD 2007–11–13 Was Issued

Since we issued AD 2007–11–13, a new ALI revision was released that incorporates NDI techniques and reduced repetitive inspection intervals for three PSEs. We have determined that these reduced intervals are necessary to address the unsafe condition.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing 717–200, Report MDC–96K9063, Airworthiness

Limitations Instructions, Revision 14, dated July 2015. The service information describes procedures for inspecting PSEs, and includes a change to reduce the interval inspections for three PSEs and adds NDI techniques to the inspection process. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all requirements of AD 2007–11–13. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate reduced intervals for the inspections for three PSEs and add NDI techniques to the inspection process.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Costs of Compliance

We estimate that this proposed AD affects 572 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
Maintenance or inspection program revision	1 work-hour × $85 per hour = $85	$85	$48,620

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007–11–13, Amendment 39–15070 (72 FR 29237, May 25, 2007), and adding the following new AD:

The Boeing Company: Docket No. FAA-2016–6427; Directorate Identifier 2015–NM–200–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by June 27, 2016.

(b) Affected ADs

This AD replaces AD 2007–11–13, Amendment 39–15070 (72 FR 29237, May 25, 2007) ("AD 2007–11–13").

(c) Applicability

This AD applies to all The Boeing Company Model 717–200 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 51, Standard practices/structures.

(e) Unsafe Condition

This AD was prompted due to a reduction in the repetitive inspection interval for three principal structural elements (PSE). We are issuing this AD to detect and correct fatigue cracking of certain PSEs. Such cracking could adversely affect the structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Revising of the Airworthiness Limitations Section (ALS) With Updated Service Information

This paragraph restates the requirements of paragraph (h) of AD 2007–11–13, with updated service information. Within 180 days after June 29, 2007 (the effective date of AD 2007–11–13): Revise the ALS of the Instructions for Continued Airworthiness, Airworthiness Limitations Instructions (ALI), in accordance with Boeing 717–200 ALI, Report MDC–96K9063, Revision 5, dated February 2006.

(h) Retained Provision Regarding Alternative Actions, Intervals With Updated Information

This paragraph restates the requirements of paragraph (i) of AD 2007–11–13, with updated information. Except as required by paragraph (i) of this AD: After the ALS has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.*, inspections), intervals, may be used unless the actions, intervals, are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k) of this AD.

(i) New Maintenance or Inspection Program Revision

Within 180 days after the effective date of this AD: Revise the maintenance or inspection program, as applicable, to incorporate the information specified in Boeing 717–200 ALI, Report MDC–96K9063, Revision 14, dated July 2015. The initial compliance times for doing the actions specified in Boeing 717–200 ALI, Report MDC–96K9063, Revision 14, dated July 2015, are at the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD. Compliance with this paragraph terminates the requirements of paragraph (g) of this AD.

(1) Within the applicable compliance times specified in Boeing 717–200 ALI, Report MDC–96K9063, Revision 14, dated July 2015.

(2) Within 180 days from the effective date of this AD.

(j) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.*, inspections) or intervals may be used unless the actions or intervals are approved as an AMOC in accordance with the procedures specified in paragraph (k) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l)(1) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2007–11–13 are not approved as AMOCs with this AD.

(l) Related Information

(1) For more information about this AD, contact Eric Schrieber, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5348; fax: 562–627–5210; email: *eric.schrieber@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 28, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–10740 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6429; Directorate Identifier 2015–NM–117–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2015–05–02, for certain Airbus Model A318, A319, A320, and A321 series airplanes. AD 2015–05–02 requires revising the maintenance or inspection program to incorporate new, more restrictive airworthiness limitations. Since we issued AD 2015–05–02, an evaluation by the design approval holder (DAH) indicates that principal structural elements and certain life limited parts are subject to widespread fatigue damage (WFD). This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new or revised structural inspection requirements. We are proposing this AD to prevent fatigue cracking, accidental damage, or corrosion in principal structural elements, and WFD, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by June 27, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6429; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6429; Directorate Identifier 2015–NM–117–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as widespread fatigue damage (WFD). As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

On February 25, 2015, we issued AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015) ("AD 2015–05–02") to supersede AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015). AD 2015–05–02 requires revising the maintenance or inspection program, as applicable, to incorporate new, more restrictive airworthiness limitations on all Airbus Model A318, A319, A320, and A321 series airplanes.

Since we issued AD 2015–05–02, an evaluation by the DAH indicates that principal structural elements and certain life limited parts are subject to widespread fatigue damage WFD. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new or revised structural inspection requirements.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0083, dated May 12, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition.

The MCAI states:

> The airworthiness limitations for Airbus A320 family aeroplanes are currently included in Airbus A318/A319/A320/A321 Airworthiness Limitations Section (hereafter referred to as 'ALS') documents. The Damage Tolerant airworthiness limitation items are published in ALS Part 2, approved by EASA.
>
> The instructions contained in the ALS Part 2 have been identified as mandatory actions for continued airworthiness. Failure to comply with these instructions could result in an unsafe condition.
>
> Previously, EASA issued AD 2013–0147 (*http://ad.easa.europa.eu/blob/easa_ad_2013_0147_superseded.pdf/AD_2013-0147_1*) [which corresponds to FAA AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015) to require accomplishment of all maintenance tasks as described in ALS Part 2 at Revision 02. The new ALS Part 2 Revision 03 [Issue October 27, 2014] includes new and/or more restrictive items and was approved on 27 October 2014.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2013–0147, which is superseded, and requires accomplishment of all maintenance tasks as described in ALS Part 2 at Revision 03.

The required action is revising the maintenance or inspection program to incorporate new or revised structural inspection requirements. The unsafe condition is fatigue cracking, accidental damage, or corrosion in principal structural elements, and WFD, which could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6429.

Other Relevant Rulemaking

We have issued NPRM Docket FAA–2015–6539, Directorate Identifier 2015–NM–036–AD (80 FR 74723, November 30, 2015), for all Airbus Model A318–111 and –112 airplanes; Model A319–111, –112, –113, –114, and –115 airplanes; Model A320–211, –212, and –214 airplanes; and Model A321–111, –112, –211, –212, and –213 airplanes. That NPRM proposes to require repetitive inspections that reduce the compliance time for Task 712111–01, Detailed Inspection of Forward Engine Mount Installation. Therefore, Task 712111–01 is not included in this proposed AD.

Related Service Information Under 1 CFR Part 51

Airbus has issued Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 04, dated December 18, 2015, of the A318/A319/A320/A321 Airworthiness Limitation Section (ALS). The service information describes DT ALIs associated with WFD.

Airbus has also issued Part 2, Damage Tolerant Airworthiness Limitation Items

(DT–ALI), Variation 4.2, dated January 15, 2016, of the A318/A319/A320/A321 Airworthiness Limitation Section (ALS). The service information describes DT ALIs associated with WFD.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

This proposed AD requires revisions to certain operator maintenance documents to include new actions (*e.g.*, inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator might not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) in accordance with the provisions of paragraph (k)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Differences Between This Proposed AD and the MCAI or Service Information

This proposed AD differs from the MCAI in that it specifies revising the maintenance or inspection program, as applicable, to incorporate the ALIs specified in Airbus A318/A319/A320/A321 ALS Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 04, dated December 18, 2015; and Airbus A318/A319/A320/A321 ALS Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Variation 4.2, dated January 15, 2016. The MCAI specifies incorporating the ALIs specified in Airbus A318/A319/A320/A321 ALS Safe Life Airworthiness Limitation Section (ALS), Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, Issue October 27, 2014. We have coordinated this change with EASA.

EASA has issued EASA Proposed Airworthiness Directive (PAD) 16–029, dated February 24, 2016, which specifies incorporating the ALI's in Airbus A318/A319/A320/A321 ALS Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 04, dated December 18, 2015; and Airbus A318/A319/A320/A321 ALS Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Variation 4.2, dated January 15, 2016.

The MCAI specifies that if there are findings from the ALS inspection tasks, corrective actions must be accomplished in accordance with Airbus maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Airworthiness Limitations Based on Type Design

The FAA recently became aware of an issue related to the applicability of ADs that require incorporation of an ALS revision into an operator's maintenance or inspection program.

Typically, when these types of ADs are issued by civil aviation authorities of other countries, they apply to all airplanes covered under an identified type certificate (TC). The corresponding FAA AD typically retains applicability to all of those airplanes. In addition, U.S. operators must operate their airplanes in an airworthy condition, in accordance with 14 CFR 91.7(a). Included in this obligation is the requirement to perform any maintenance or inspections specified in the ALS, and in accordance with the ALS as specified in 14 CFR 43.16 and 91.403(c), unless an alternative has been approved by the FAA.

When a type certificate is issued for a type design, the specific ALS, including revisions, is a part of that type design, as specified in 14 CFR 21.31(c). The sum effect of these operational and maintenance requirements is an obligation to comply with the ALS defined in the type design referenced in the manufacturer's conformity statement. This obligation may introduce a conflict with an AD that requires a specific ALS revision if new airplanes are delivered with a later revision as part of their type design.

To address this conflict, the FAA has approved AMOCs that allow operators to incorporate the most recent ALS revision into their maintenance/inspection programs, in lieu of the ALS revision required by the AD. This eliminates the conflict and enables the operator to comply with both the AD and the type design.

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to limit the applicability of ADs that mandate ALS revisions to those airplanes that are subject to an earlier revision of the ALS, either as part of the type design or as mandated by an earlier AD.

This proposed AD therefore applies to the airplanes identified in paragraph (c) of this proposed AD with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before the date of approval of the ALS revision identified in this proposed AD. Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet.

Record of Ex Parte Communication

In preparation of AD actions, it is the practice of the FAA to obtain technical information and information on the operational and economic impact from design approval holders and aircraft operators. We discussed certain issues related to this NPRM in a recent meeting with Airlines for America (A4A). Shortly after this NPRM is published, we will post a summary of this meeting in the rulemaking docket. For information on locating the docket, see "Examining the AD Docket."

Costs of Compliance

We estimate that this proposed AD affects 959 airplanes of U.S. registry.

The actions required by AD 2015–05–02, and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2015–05–02 is $170 per product.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $163,030, or $170 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015), and adding the following new AD:

Airbus: Docket No. FAA–2016–6429; Directorate Identifier 2015–NM–117–AD.

(a) Comments Due Date

We must receive comments by June 27, 2016.

(b) Affected ADs

This AD replaces AD 2015–05–02, Amendment 39–18112 (80 FR 15152, March 23, 2015) ("AD 2015–05–02").

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before January 15, 2016.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic Inspections.

(e) Reason

This AD was prompted by an evaluation by the design approval holder (DAH) which indicates that principal structural elements and certain life limited parts are subject to widespread fatigue damage (WFD). We are issuing this AD to prevent fatigue cracking, accidental damage, or corrosion in principal structural elements, and WFD, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (n) of AD 2015–05–02, with no changes. Within 30 days after March 2, 2015 (the effective date of AD 2014–23–15, Amendment 39–18031 (80 FR 3871, January 26, 2015) ("AD 2014–23–15")), revise the maintenance or inspection program, as applicable, to incorporate the Airworthiness Limitation Items (ALIs) specified in paragraphs (g)(1) and (g)(2) of this AD. The initial compliance time for accomplishing the actions is at the applicable time identified in the ALIs specified in paragraphs (g)(1) and (g)(2) of this AD; or within 4 months after March 2, 2015 (the effective date of AD 2014–23–15); whichever occurs later.

(1) Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, Revision 02, dated May 13, 2011.

(2) Airbus A318/A319/A320/A321 ALS Part 2—Damage-Tolerant Airworthiness Limitation Items (DT ALI), Revision 02, dated May 28, 2013.

(h) Retained Limitation: No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs), With Exception

This paragraph restates the requirements of paragraph (o) of AD 2015–05–02, with an exception. Except as required by paragraph (i) of this AD, after accomplishing the revision required by paragraph (g) of this AD, no alternative actions (*e.g.*, inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(i) New Requirement of This AD: Maintenance or Inspection Program Revision

Within 60 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the ALIs specified in Airbus A318/A319/A320/A321 ALS Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 04, dated December 18, 2015; and Airbus A318/A319/A320/A321 ALS Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Variation 4.2, dated January 15, 2016. The initial compliance time for accomplishing the actions is at the applicable time identified in the ALIs specified in Airbus A318/A319/A320/A321 ALS Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 04, dated December 18, 2015; and Airbus A318/A319/A320/A321 ALS Part 2, Damage Tolerant Airworthiness Limitation Items (DT–ALI), Variation 4.2, dated January 15, 2016; without exceeding the inspection intervals in the ALIs specified in the service information identified in paragraph (g)(2) of this AD, except for the ALI tasks identified in paragraphs (i)(1) though (i)(4) of this AD. Accomplishing these actions terminates the requirements of paragraph (g)(2) of this AD.

(1) Task 712111–01–1, "Detailed Inspection of Forward Engine Mount Installation."

(2) Task 712111–01–2, "Detailed Inspection of Forward Engine Mount Installation."

(3) Task 712111–01–3, "Detailed Inspection of Forward Engine Mount Installation."

(4) Task 712111–01–4, "Detailed Inspection of Forward Engine Mount Installation."

(j) New No Alternative Actions and/or Intervals

After accomplishing the revision required by paragraph (i) of this AD, no alternative actions (*e.g.*, inspections) and/or intervals may be used unless the actions and/or intervals are approved as an AMOC in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(ii) AMOCs approved previously for AD 2015–05–02, are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0083, dated May 12, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6429.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 3, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–10914 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6430; Directorate Identifier 2015–NM–176–AD;]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2005–13–30, which applies to all Boeing Model 737–100, –200, and –200C series airplanes. AD 2005–13–30 currently requires repetitive inspections to detect discrepancies of certain fuselage skin panels located just aft of the wheel well, and repair if necessary. Since we issued AD 2005–13–30, an evaluation by the design approval holder (DAH) indicates that the fuselage skin is subject to widespread fatigue damage (WFD), and we have received reports of cracks at the chem-milled steps in the fuselage skin. This proposed AD would add new fuselage skin inspections for cracking, inspections to detect missing or loose fasteners and any disbonding or cracking of bonded doublers, permanent repairs of time-limited repairs, related investigative and corrective actions if necessary, and skin panel replacement. We are proposing this AD to detect and correct fatigue cracking of the fuselage skin panels, which could cause rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by June 27, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6430.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6430; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wade Sullivan, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6430; fax: 425–917–6590; email: *wade.sullivan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6430; Directorate Identifier 2015–NM–176–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as widespread fatigue damage. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

On June 24, 2005, we issued AD 2005–13–30, Amendment 39–14167 (70 FR 36829, June 27, 2005) ("AD 2005–13–30"), for all Boeing Model 737–100, –200, and –200C series airplanes. AD 2005–13–30 requires repetitive inspections to detect discrepancies of certain fuselage skin panels located just aft of the wheel well, and repair if necessary. AD 2005–13–30 resulted from reports of fatigue cracking of the skins and doublers located aft of the wing, between body station (BS) 727 and BS 1016, and between body stringers S–14 and S–25 on numerous Boeing Model 737–100, –200, and –200C series airplanes. On some airplanes, reinforcing angles had been installed on the skin doublers; however, cracking was detected on both modified and unmodified airplanes. The cracking has been attributed to fatigue from a combination of shear stresses due to repeated wrinkling of the skin, and the skin chem-milled pockets configuration. We issued AD 2005–13–30 to detect and correct fatigue cracking of the fuselage skin panels, which could cause rapid decompression of the airplane.

Actions Since AD 2005–13–30 Was Issued

Since we issued AD 2005–13–30, an evaluation by the DAH indicates that the fuselage skin is subject to WFD, and we have received reports of cracks at the chem-milled steps in the fuselage skin.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015. The service information describes procedures for inspection and repair of the fuselage skin panels between BS 727 and BS 1016, and between stringers S–14 and S–25; and also describes procedures for skin panel replacement. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2005–13–30, this proposed AD would retain certain requirements of AD 2005–13–30. Those requirements are referenced in the service information identified previously, which, in turn, is referenced in paragraph (h) of this proposed AD.

This proposed AD would also require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between this Proposed AD and the Service Information." For airplanes having line numbers 1 through 291, this proposed AD would require actions done in accordance with a method approved by the Manager, Seattle ACO, FAA.

The phrase "related investigative actions" is used in this proposed AD. "Related investigative actions" are follow-on actions that (1) are related to the primary actions, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase "corrective actions" is used in this proposed AD. "Corrective actions" are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, specifies to contact the manufacturer for instructions on how to repair certain conditions and also to obtain certain work instructions, but this proposed AD would require repairing those conditions and also to obtain those work instructions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Explanation of Compliance Time

The compliance time for the replacement specified in this proposed AD for addressing WFD was established to ensure that discrepant structure is replaced before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. We will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without extensive new data that would substantiate and clearly warrant such an extension.

Costs of Compliance

We estimate that this proposed AD affects 9 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection [actions retained from AD 2005–13–30].	Up to 88 work-hours × $85 per hour = $7,480 per inspection cycle.	$0	Up to $7,480 per inspection cycle.	Up to $67,320 per inspection cycle.
Inspection [new proposed action].	Up to 1,914 work-hours × $85 per hour = $162,690 per inspection cycle.	$0	Up to $162,690 per inspection cycle.	Up to $1,464,210 per inspection cycle.
Skin panel replacement [new proposed action].	688 work-hours × $85 per hour = $58,480.	$96,000	$154,480	$1,390,320.

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Time-limited repair	24 work-hours × $85 per hour = $2,040	(1)	[1] $2,040
Permanent repair	43 work-hours × $85 per hour = $3,655	(1)	[1] $3,655
Permanent repair inspection	7 work-hours × $85 per hour = $595	(1)	[1] $595

[1] We have received no definitive data that would enable us to provide parts cost estimates for the on-condition actions specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2005–13–30, Amendment 39–14167 (70 FR 36829, June 27, 2005), and adding the following new AD:

The Boeing Company: Docket No. FAA–2016–6430; Directorate Identifier 2015–NM–176–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by June 27, 2016.

(b) Affected ADs

This AD replaces AD 2005–13–30, Amendment 39–14167 (70 FR 36829, June 27, 2005) ("AD 2005–13–30").

(c) Applicability

This AD applies to all The Boeing Company Model 737–100, –200, and –200C series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the fuselage skin is subject to widespread fatigue damage (WFD), and reports of cracks at the chem-milled steps in the fuselage skin. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin panels, which could cause rapid decompression of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Actions for Group 1 Airplanes

For Group 1 airplanes identified in Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015: Within 120 days after the effective date of this AD, accomplish actions to correct the unsafe condition (*e.g.*, inspections, repairs, modifications, and related investigative and corrective actions) using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(h) Inspections, Related Investigative and Corrective Actions

Except for Group 1 airplanes identified in Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015: At the applicable times specified in tables 1 and 2 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as required by paragraphs (i)(1) and (i)(2) of this AD: Do the applicable inspections to detect cracks in the fuselage skin panels; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as required by paragraphs (i)(3) and (i)(4) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspections thereafter at the applicable intervals specified Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015. Accomplishment of a repair in accordance with "Part 3: Repair" of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as required by paragraph (i)(3) of this AD, is terminating action for the repetitive inspections required by this paragraph at the repaired locations only.

(i) Exceptions to Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, Dated June 30, 2015

(1) Where Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, specifies compliance times "after the Revision 3 date of this service bulletin," this AD requires compliance within the specified compliance times after the effective date of this AD.

(2) The Condition column of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, refers to airplanes in certain configurations as of the "issue date of Revision 3 of this service bulletin." However, this AD applies to airplanes in the specified configurations "as of the effective date of this AD."

(3) Where Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, specifies contacting Boeing for repair instructions or work instructions, before further flight, repair or perform the work instructions using a method approved in accordance with the procedures specified in paragraph (o) of this AD, except as required by paragraph (i)(4) of this AD.

(4) For airplanes on which an operator has a record that a skin panel was replaced with a production skin panel at or before 59,000 total flight cycles: At the applicable time for the next inspection as specified in tables 1 and 2 of paragraph 1.E., "Compliance," Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as provided by paragraphs (i)(1) and (i)(2) of this AD: Perform inspections and applicable corrective actions using a method approved in accordance with the procedures specified in paragraph (o) of this AD.

(j) Actions for Airplanes With a Time Limited Repair Installed

Except for Group 1 airplanes identified in Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015: Do the applicable actions required by paragraphs (j)(1) and (j)(2) of this AD.

(1) For airplanes with a time limited repair installed as specified in Boeing Special Attention Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001: At the applicable times specified in table 3 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as provided by paragraphs (i)(1) and (i)(2) of this AD: Do the actions specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this AD.

(i) Do the applicable inspections to detect missing or loose fasteners and any disbonding or cracking of bonded doublers; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as required by paragraph (i)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspections thereafter at the applicable intervals specified Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015.

(ii) Make the time limited repair permanent; and do all applicable related investigative and corrective actions; in accordance the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as required by paragraph (i)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Accomplishing the permanent repair required by this paragraph terminates the inspections required by paragraph (j)(1)(i) of this AD for the permanently repaired area only.

(2) For airplanes with a time limited repair installed as specified in Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015: At the applicable times specified in table 4 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015: Do the actions specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this AD.

(i) Do the applicable inspections to detect missing or loose fasteners and any disbonding or cracking of bonded doublers; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as required by paragraph (i)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspections thereafter at the applicable intervals specified Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015.

(ii) Make the time limited repair permanent; and do all applicable related investigative and corrective actions; in accordance the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as required by paragraph (i)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Accomplishing the permanent repair required by this paragraph terminates the inspections required by paragraph (j)(2)(i) of this AD for the permanently repaired area only.

(k) Modification of Certain Permanent Repairs

Except for Group 1 airplanes identified in Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015: For airplanes with an existing time limited repair that was made permanent as specified in Boeing Special Attention Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001: At the applicable times specified in table 5 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as required by paragraph (i)(1) of this AD: Modify the existing permanent repair; and do all applicable related investigative and corrective actions; in accordance the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as required by paragraph (i)(3) of this AD. Do all applicable related investigative and corrective actions before further flight.

(l) Certain Post-Repair Inspections

For airplanes with a permanent repair installed as specified in Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015: At the applicable time specified in table 6 of paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 737–53–

1065, Revision 3, dated June 30, 2015: Do an external low frequency eddy current (LFEC) inspection for cracking of the skin at the critical fastener row of the repair doubler; and do all applicable corrective actions; in accordance the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015, except as required by paragraph (i)(3) of this AD. Do all applicable corrective actions before further flight. Repeat the LFEC inspection thereafter at the applicable intervals specified in Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015.

(m) Skin Panel Replacement

Except for Group 1 airplanes identified in Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015: At the later of the times specified in paragraphs (m)(1) and (m)(2) of this AD: Replace the applicable skin panels, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1065, Revision 3, dated June 30, 2015. Do all applicable related investigative and corrective actions before further flight. Doing the skin panel replacement required by this paragraph terminates the inspection requirements of paragraph (h) of this AD for that skin panel only, provided the skin panel was replaced with a production skin panel after 59,000 total flight cycles.

(1) Before 60,000 total flight cycles, but not at or before 59,000 total flight cycles.

(2) Within 6,000 flight cycles after the effective date of this AD, but not at or before 59,000 total flight cycles.

(n) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 737–53–1065, Revision 2, dated April 19, 2001, which was incorporated by reference in AD 2005–13–30.

(o) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (p)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2005–13–30, are approved as AMOCs for the corresponding provisions of paragraph (h) of this AD.

(p) Related Information

(1) For more information about this AD, contact Wade Sullivan, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6430; fax: 425–917–6590; email: *wade.sullivan@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 4, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11095 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6428; Directorate Identifier 2015–NM–119–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 airplanes. This proposed AD was prompted by reports indicating that certain wing side-of-body stringer fittings have been installed with faying surface mismatch beyond the allowed machining tolerance. This proposed AD would require inspection of certain stringer fittings for faying surface mismatch common to the side-of-body rib chord, replacement if necessary, and replacement of the clearance fit fasteners common to the side-of-body fittings and upper side-of-body rib chord with tapered sleeve bolts. We are proposing this AD to prevent an unacceptable reduction of the fatigue life in the upper side-of-body rib chord. Associated fatigue cracks can reduce the structural capability to a point where it cannot sustain limit load, which could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by June 27, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6428.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6428; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Allen Rauschendorfer, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6487; fax: 425–917–6590; email: *allen.rauschendorfer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6428; Directorate Identifier 2015–NM–119–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports indicating that certain wing side-of-body stringer fittings have been installed with faying surface mismatch beyond the allowed machining tolerance. The fittings are assembled to the mating side-of-body rib chord. The faying surface mismatch produces a gouge in the mating surface which reduces the fatigue life, and could grow into a widespread fatigue condition on the upper side-of-body rib chord. We are proposing this AD to prevent an unacceptable reduction of the fatigue life in the upper side-of-body rib chord. Associated fatigue cracks can reduce the structural capability to a point where it cannot sustain limit load, which could adversely affect the structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin B787–81205–SB570018–00, Issue 001, dated July 1, 2015. The service information describes procedures for inspection of the left and right hand side stringer 1 fittings for faying surface mismatch common to the side-of-body rib chord. If faying surface mismatch is found, instructions are also given to replace the stringer 1 fitting, and removal and replacement of the clearance fit fasteners common to the side-of-body fittings and upper side-of-body rib chord with tapered sleeve bolts from stringer 5 to stringer 11. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as described in "Differences Between this Proposed AD and the Service Information."

Differences Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin B787–81205–SB570018–00, Issue 001, dated July 1, 2015, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 5 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification and inspection.	144 work-hours × $85 per hour = $12,240	$100,079	$112,319	$561,595

We estimate the following costs to do any necessary corrective action for fretting damage or cutter mismatch that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these corrective actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair for fretting damage or cutter mismatch.	9 work-hours × $85 per hour = $765	$0	$765

We have received no definitive data that would enable us to provide cost estimates for the crack repair specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–6428; Directorate Identifier 2015–NM–119–AD.

(a) Comments Due Date

We must receive comments by June 27, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB570018–00, Issue 001, dated July 1, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports indicating that certain wing side-of-body stringer fittings have been installed with faying surface mismatch beyond the allowed machining tolerance. We are issuing this AD to prevent an unacceptable reduction of the fatigue life in the upper side-of-body rib chord. Associated fatigue cracks can reduce the structural capability to a point where it cannot sustain limit load, which could adversely affect the structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection

Before the accumulation of 18,000 total flight cycles, or within 13 years after the effective date of this AD, whichever occurs first, do the inspections specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB570018–00, Issue 001, dated July 1, 2015, except as required by paragraph (i) of this AD. Do all applicable corrective actions before further flight.

(1) Do a detailed inspection for fretting damage of the faying surface of the aluminum T-chord.

(2) Do an eddy current inspection for cracking of the fastener holes.

(3) Do a detailed inspection for a machine mismatch condition of the stringer 1 fitting faying surface.

(h) Modifications

Concurrently with accomplishment of the requirements of paragraph (g) of this AD: Modify the stringer fitting fasteners, and do an eddy current inspection for cracking of the fastener holes, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB570018–00, Issue 001, dated July 1, 2015. If any crack is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Exception to Service Information Specifications

Where Boeing Alert Service Bulletin B787–81205–SB570018–00, Issue 001, dated July 1, 2015, specifies to contact Boeing for repair of cracking: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (i) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

(1) For more information about this AD, contact Allen Rauschendorfer, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6487; fax: 425–917–6590; email: *allen.rauschendorfer@faa.gov.*

(2) For service information identified in this AD, Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 3, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–10915 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6431; Directorate Identifier 2015–NM–182–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A318–112 airplanes, A319–111, –112, –115, –132, and –133 airplanes, A320–214, –232, and –233 airplanes, and A321–211, –212, –213, –231, and –232 airplanes. This proposed AD was prompted by a quality control review on the final assembly line, which determined that aluminum alloy with inadequate heat treatment had been delivered and used on several structural parts. This proposed AD would require a one-time eddy current conductivity measurement of certain cabin, cargo compartment, and frame structural parts to determine if aluminum alloy with inadequate heat treatment was used, and replacement if necessary. We are proposing this AD to detect and replace structural parts made of aluminum alloy with inadequate heat treatment. This condition could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by June 27, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax*: 202–493–2251.
- *Mail*: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery*: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet: *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6431; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–6431; Directorate Identifier 2015–NM–182–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0219, dated November 3, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Model A318–112 airplanes, A319–111, –112, –115, –132, and –133 airplanes, A320–214, –232, and –233 airplanes, and A321–211, –212, –213, –231, and –232 airplanes. The MCAI states:

> Following an Airbus quality control review on the final assembly line, it was discovered that aluminum alloy with inadequate heat treatment were delivered by a supplier for several structural parts. The results of the investigations highlighted that 1% of the stock could be impacted by this wrong material.
>
> Structural investigations demonstrated the capability to sustain the static limits loads, and sufficient fatigue life up to a certain inspection threshold.
>
> This condition, if not detected and corrected, could reduce the aeroplane structural integrity following fatigue load.
>
> To address this potential unsafe condition, Airbus issued Service Bulletin (SB) A320–53–1292, SB A320–53–1293, and SB A320–53–1294 to provide inspection instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time Special Detailed Inspection (SDI) [*i.e.,* eddy current conductivity measurement] of certain cabin, cargo compartment and frame parts [for material identification] and, depending on findings, replacement with serviceable parts.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6431.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information:

- Airbus Service Bulletin A320–53–1292, dated July 23, 2015; including Appendices 01 and 02, dated July 23, 2015.
- Airbus Service Bulletin A320–53–1293, dated July 30, 2015; including Appendices 01 and 02, dated July 30, 2015.
- Airbus Service Bulletin A320–53–1294, dated July 23, 2015; including Appendices 01 and 02, dated July 23, 2015.

The service information describes procedures for a one-time eddy current conductivity measurement of certain cabin, cargo compartment, and frame structural parts to determine if aluminum alloy with inadequate heat treatment was used, and replacement of any affected part with a serviceable part. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 46 airplanes of U.S. registry.

We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $23,460, or $510 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2016–6431; Directorate Identifier 2015–NM–182–AD.

(a) Comments Due Date

We must receive comments by June 27, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category; manufacturer serial numbers 4895, 4903, 4911, 4919, 4929, 4938, 4942, 4944, 4946, 4948, and 4951, 4956 through 5541 inclusive, 5544, 5547, 5550, 5551, 5553, 5556, 5559, 5561, 5562, 5563, 5565, 5566, 5570, 5572, 5576, and 5578.

(1) Airbus Model A318–112 airplanes.

(2) Airbus Model A319–111, –112, –115, –132, and –133 airplanes.

(3) Airbus Model A320–214, –232, and –233 airplanes.

(4) Airbus Model A321–211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a quality control review on the final assembly line, which determined that aluminum alloy with inadequate heat treatment had been delivered and used on several structural parts. We are issuing this AD to detect and replace structural parts made of aluminum alloy with inadequate heat treatment. This condition could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) One-time Measurement

Within 6 years since the date of issuance of the original certificate of airworthiness or the date of issuance of the original export certificate of airworthiness: Do a one-time eddy current conductivity measurement of the cabin, cargo compartment, and frame structural parts identified in the "Affected P/N (part number)" column of tables 1, 2, and 3 to paragraphs (g) and (h) of this AD to determine if aluminum alloy with inadequate heat treatment was used, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) For cabin structural parts: Airbus Service Bulletin A320–53–1292, dated July 23, 2015; including Appendices 01 and 02, dated July 23, 2015.

(2) For cargo compartment structural parts: Airbus Service Bulletin A320–53–1293, dated July 30, 2015; including Appendices 01 and 02, dated July 30, 2015.

(3) For frame structural parts: Airbus Service Bulletin A320–53–1294, dated July 23, 2015; including Appendices 01 and 02, dated July 23, 2015.

TABLE 1 TO PARAGRAPHS (G) AND (H) OF THIS AD—PARTS TO BE INSPECTED/INSTALLED

[Airbus Service Bulletin A320–53–1292]

Affected P/N	Acceptable replacement P/N	Area
D2127245500000	D2127245500000	Cabin
D2127247600200	D2127247600200	Cabin

Table 1 to Paragraphs (g) and (h) of this AD—Parts to be Inspected/Installed—Continued

[Airbus Service Bulletin A320–53–1292]

Affected P/N	Acceptable replacement P/N	Area
D2127247600300	D2127247600300	Cabin
D2127399900200	D2127399900200	Cabin
D2127399900300	D2127399900300	Cabin
D2127698900800	D2127698900800	Cabin
D2127698902400	D2127698902400	Cabin
D2527075131200	D2527075131251	Cabin
D2527075131300	D2527075131351	Cabin
D2527075138000	D2527075138000	Cabin
D2527075138100	D2527075138100	Cabin
D2527075138200	D2527075138200	Cabin
D2527075138300	D2527075138300	Cabin
D2527075138600	D2527075138651	Cabin
D2527075138800	D2527075138851	Cabin
D2527240220600	D2527240220651	Cabin
D2527240220700	D2527240220751	Cabin
D2527240220800	D2527240220851	Cabin
D9249591201000	D9249591201000	Cabin
D9249591201800	D9249591201800	Cabin
D9249591227800	D9249591227851	Cabin
D9249591227900	D9249591227951	Cabin
D9249591228000	D9249591228051	Cabin
D9249591228100	D9249591228151	Cabin

Table 2 to Paragraphs (g) and (h) of this AD—Parts to be Inspected/Installed

[Airbus Service Bulletin A320–53–1293]

Affected P/N	Acceptable replacement P/N	Area
D2707033520000	D2707033520000	Cargo
D2827027120000	D2827027120000	Cargo
D2827093500400	D2827093500400	Cargo
D2907013701200	D2907013701251	Cargo
D2907013800400	D2907013800451	Cargo
D3247012900000	D3247012900051	Cargo
D3817003820000	D3817003820000	Cargo
D3817012320200	D3817012320251	Cargo
D3837021201600	D3837021201600	Cargo
D3837033300400	D3837033300400	Cargo
D4918518320200	D4918518320200	Cargo
D5347043420400	D5347043420451	Cargo
D9248511000000	D9248511000051	Cargo
D9249254100200	D9249254100251	Cargo
D9249282300000	D9249282300000	Cargo

Table 3 to Paragraphs (g) and (h) of this AD—Parts to be Inspected/Installed

[Airbus Service Bulletin A320–53–1294]

Affected P/N	Acceptable replacement P/N	Area
D2827098326800	D2827098326851	Frame
D5347051620600	D5347051620651	Frame
D5347051720600	D5347051720651	Frame
D5347057120000	D5347057120051	Frame
D5347067520600	D5347067520651	Frame
D5347067521400	D5347067521451	Frame
D5347067520800	D5347067520851	Frame
D5347067521000	D5347067521051	Frame
D5347067521600	D5347067521651	Frame
D5347067620600	D5347067620600	Frame
D5347067720200	D5347067720251	Frame
D5347067720400	D5347067720451	Frame
D5347986520200	D5347986520251	Frame

(h) Replacement

If during the measurement required by paragraph (g) of this AD, any affected P/N specified in table 1, 2, or 3 to paragraphs (g) and (h) of this AD is found to have a measured value greater than that specified in Figure A–GFAAA, Sheet 01, "Inspection Flowchart," of the applicable service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Before further flight, replace the affected part with the corresponding acceptable replacement part specified in table 1, 2, or 3 to paragraphs (g) and (h) of this AD, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Required for Compliance (RC): If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0219, dated November 3, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6431.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet: *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 4, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–11094 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 411, and 416

[Docket No. SSA–2014–0016]

RIN 0960–AH66

Unsuccessful Work Attempts and Expedited Reinstatement Eligibility

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to remove some of the requirements for evaluation of an unsuccessful work attempt (UWA) that lasts between 3 and 6 months. We also propose to allow previously entitled beneficiaries to apply for expedited reinstatement (EXR) in the same month they stop performing substantial gainful activity (SGA). Provisional benefits will begin the month after the request for EXR if the beneficiary stops performing SGA in the month of the EXR request. These changes would simplify our policies and make them easier for the public to understand.

DATES: To ensure that your comments are considered, we must receive them no later than July 11, 2016.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2014–0016 so that we may associate your comments with the correct regulation.

CAUTION: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2014–0016. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Kristine Erwin-Tribbitt, Office of Retirement and Disability Policy, Office of Research, Demonstration, and Employment Support, Social Security Administration, 6401 Security Boulevard, Robert Ball Building 3–A–26, Baltimore, MD 21235–6401, (410) 965–3353. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

SGA and UWA

To be eligible for disability benefits, an individual must be unable to engage in any SGA.[1] SGA is work activity that is both substantial and gainful.[2] Work activity is substantial if it involves the performance of significant physical or mental activities.[3] "Gainful work activity" is work done for pay or profit, or if it is the kind of work usually done for pay or profit, whether or not a profit is realized.[4] We will not determine that an individual is disabled or continues to be disabled if he or she is able to perform SGA.

We use several rules to decide whether an individual has performed

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[1] 42 U.S.C. 223(d)(1), 42 U.S.C. 1382c(a)(3)(A).

[2] 20 CFR 404.1572 and 416.972.

[3] 20 CFR 404.1572(a) and 416.972(a).

[4] 20 CFR 404.1572(b) and 416.972(b).

SGA. Generally, our first consideration in evaluating work activity will be the earnings derived from the work activity.[5] We use earnings guidelines to evaluate whether work activity is SGA.[6] We ordinarily consider an individual who is earning more than a certain monthly amount to be engaged in SGA.[7] For the self-employed, we consider income or the value of the individual's activities to the business when determining whether he or she engaged in SGA.[8]

Disability evaluation is generally concerned with the ability to work over an extended period rather than in short, isolated periods. Disability claimants and beneficiaries may attempt to return to work and engage in SGA following a break in the continuity of their work. For SGA determination purposes, we may disregard work in employment or self-employment if a claimant or beneficiary, after working for a period of 6 months or less, stops working or reduces the amount of work so that the earnings fall below the SGA level because of the original impairment or the removal of special conditions that were essential to the performance of his or her work, and if there was a significant break in the continuity of work before this work attempt.[9] We call this a UWA. Earnings from a UWA will not show that a claimant or beneficiary is able to do SGA.[10] For purposes of the Social Security disability program under title II of the Act, we apply UWA policies when we determine initial entitlement to benefits as well as after approval for benefits. For purposes of the Supplemental Security Income (SSI) program under title XVI of the Act, we apply UWA only when determining initial entitlement to benefits.

Under our current rules, we evaluate the success of a work attempt by its duration. We look at work attempts lasting less than 3 months and those lasting between 3 and 6 months. We consider work of 3 months or less to be a UWA if the claimant or beneficiary stopped working or reduced the work and earnings below the SGA earnings level because of the claimant or beneficiary's impairment, or because of the removal of special conditions which took into account the claimant or beneficiary's impairment and permitted the claimant or beneficiary to work. In contrast, to qualify as a UWA, we require the work attempt to last between 3 and 6 months to meet the same conditions for work attempts lasting 3 months or less and to also meet several additional conditions. The claimant or beneficiary must also have: (1) Been frequently absent from work because of his or her impairment, (2) performed the work unsatisfactorily because of his or her impairment, (3) worked during a period of temporary remission of his or her impairment, or (4) worked under special conditions essential to his or her performance and those conditions were removed.[11]

We propose to revise 20 CFR 404.1574(c), 404.1575(d), 416.974(c), and 416.975(d) to remove the additional conditions that we use when evaluating a work attempt in employment or self-employment that lasts between 3 and 6 months. We propose to use the current 3-month standards for all work attempts that are 6 months or less. This change would apply to Social Security Disability Insurance (SSDI) and SSI claimants and beneficiaries.[12]

Under the current rule, when an individual works between 3 and 6 months, we are required to perform additional development to determine if any of the additional conditions are met. This additional step delays case processing, in part, because we must contact the individual's employer and physician for information to support the individual's claim. Our proposed changes would result in simplified case processing and faster and better determinations and decisions.

EXR Eligibility and Provisional Benefits

Previously entitled individuals may request EXR within 60 months of their prior termination of benefits if their medical condition no longer permits them to perform SGA. To qualify for EXR, a previously entitled individual must be unable to perform SGA due to an impairment that is the same as or related to an impairment that was the basis for the previous entitlement.[13] The standard for evaluating disability on an EXR claim may be more advantageous to the claimant than the standard for evaluating disability on a completely new claim for benefits.[14] EXR applies to both SSDI and SSI programs.

Currently, our regulations state that individuals are not eligible for EXR if they perform SGA during the month in which they apply for EXR.[15] In many cases, a previously entitled individual will request EXR in the same month that he or she stopped working. However, since earnings already exceeded SGA for that month, the individual is not eligible to file for EXR until the following month. In such cases, we are required to deny the EXR request, and the individual can request EXR in the following month.

We propose to revise 20 CFR 404.1592c and 416.999a to allow previously entitled individuals to request EXR in the same month they stop performing SGA. This change would apply to SSDI and SSI claimants and beneficiaries. This change would make requesting EXR easier as we will be able to accept the request at first contact. It would also allow us to forward the individual's file immediately for a medical determination, reducing wait time and the possibility of a gap in benefit payments.

For a beneficiary who has requested EXR, provisional benefits are available for a period of up to 6 months while we make a reinstatement determination.[16] We stop paying provisional benefits when we send a notice of our determination on reinstatement, when the individual performs SGA, when the individual attains full retirement age, or when we have paid 6 months of provisional benefits. We also propose to revise 20 CFR 404.1592e(a)(1) to clarify that provisional benefits will begin the month after the individual files a request for EXR if the individual stops performing SGA in the month of request.

Clarity of This Rule

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make rules easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, *e.g.* grouping and order of sections, use of headings, paragraphing?

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[5] 20 CFR 404.1574(a)(1) and 416.974(a)(1).

[6] Id.; see also 20 CFR 404.1574(b) and 416.974(b).

[7] 20 CFR 404.1574(b)(2) and 416.974(b)(2).

[8] 20 CFR 404.1575(a)(2) and 416.975(a).

[9] 20 CFR 404.1574(c) and 416.974(c).

[10] 20 CFR 404.1574(a)(1) and 416.974(a)(1).

[11] 20 CFR 404.1574(c)(4) and 416.974(c)(4).

[12] 20 CFR 404.1574 (c)(3) and 416.974(c)(3).

[13] 20 CFR 404.1592c and 416.999a.

[14] 20 CFR 404.1592b and 416.999.

[15] 20 CFR 404.1592c and 416.999a.

[16] 20 CFR 404.1592e.

Regulatory Procedures

Executive Order 12866

We consulted with the Office of Management and Budget (OMB) and determined that this proposed rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563, and was subject to OMB review.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This rule does not create any new or affect any existing collections and, therefore, it does not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 9601, Social Security—Disability Insurance; 96.006, Supplemental Security Income; 96.008, Social Security—Work Incentives Planning and Assistance Program.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Reporting and recordkeeping requirements, Social security, Vocational rehabilitation.

20 CFR Part 416

Administrative practice and procedure, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Vocational rehabilitation.

Dated: March 14, 2016.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR part 404 subpart P and 20 CFR part 416 subpart I as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

Subpart P—Determining Disability and Blindness

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.1574 by revising the first sentence of paragraph (c)(1), revising paragraph (c)(3), removing paragraph (c)(4), and redesignating paragraph (c)(5) as (c)(4).

The revisions read as follows:

§ 404.1574 Evaluation guides if you are an employee.

* * * * *

(c) * * *

(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after you worked for a period of 6 months or less, your impairment forced you to stop working or to reduce the amount of work you do so that your earnings from such work fall below the substantial gainful activity earnings level in paragraph (b)(2) of this section, and you meet the conditions described in paragraphs (c)(2), (3), and (4) of this section. * * *

* * * * *

(3) *If you worked 6 months or less.* We will consider work of 6 months or less to be an unsuccessful work attempt if you stopped working or you reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that took into account your impairment and permitted you to work.

* * * * *

■ 3. Amend § 404.1575 by revising the first sentence of paragraph(d)(1), revising paragraph (d)(3), removing paragraph (d)(4), and redesignating paragraph (d)(5) as (d)(4).

The revisions read as follows:

§ 404.1575 Evaluation guides if you are self-employed.

* * * * *

(d) * * *

(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d)(2), (3), and (4) of this section. * * *

* * * * *

(3) *If you worked 6 months or less.* We will consider work of 6 months or less to be an unsuccessful work attempt if you stopped working or you reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that took into account your impairment and permitted you to work.

* * * * *

■ 5. Amend § 404.1592c by revising paragraph (a)(4)(i) and (c)(2) to read as follows:

§ 404.1592c Who is entitled to expedited reinstatement?

(a) * * *

(4) * * *

(i) You are not able or become unable to do substantial gainful activity because of your medical condition as determined under paragraph (c) of this section;

* * * * *

(c) * * *

(2) You are not able or become unable to do substantial gainful activity in the month you file your request for reinstatement; and

* * * * *

■ 6. Amend § 404.1592e by revising paragraph (a)(1) to read as follows:

§ 404.1592e How do we determine provisional benefits?

(a) * * *

(1) We will pay you provisional benefits, and reinstate your Medicare if you are not already entitled to Medicare, beginning with the month you file your request for reinstatement under § 404.1592c(a) if you do not perform substantial gainful activity in that month. We will pay you provisional benefits, and reinstate your Medicare if you are not already entitled to Medicare, beginning with the month after you file your request for reinstatement under § 404.1592c(a) if you perform substantial gainful activity in the month in which you file your request for reinstatement.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—Determining Disability and Blindness

■ 13. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383 (b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 14. Amend § 416.974 by revising paragraph (c)(3), removing paragraph (c)(4), and redesignating paragraph (c)(5) as (c)(4).

The revisions read as follows:

§ 416.974 Evaluation guides if you are an employee.

* * * * *

(c) * * *

(3) *If you worked 6 months or less.* We will consider work of 6 months or less to be an unsuccessful work attempt if you stopped working or you reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that took into account your impairment and permitted you to work.

* * * * *

■ 15. Amend § 416.975 by revising paragraph (d)(1) and (3), removing paragraph (d)(4), and redesignating paragraph (d)(5) as (d)(4).

The revisions read as follows:

§ 416.975 Evaluation guides if you are self-employed.

* * * * *

(d) * * *

(1) *General.* Ordinarily, work you have done will not show that you are able to do substantial gainful activity if, after working for a period of 6 months or less, you were forced by your impairment to stop working or to reduce the amount of work you do so that you are no longer performing substantial gainful activity and you meet the conditions described in paragraphs (d)(2), (3), and (4) of this section.

* * * * *

(3) *If you worked 6 months or less.* We will consider work of 6 months or less to be an unsuccessful work attempt if you stopped working or you reduced your work and earnings below the substantial gainful activity earnings level because of your impairment or because of the removal of special conditions that took into account your impairment and permitted you to work.

* * * * *

■ 16. Amend § 416.999a by revising paragraph (a)(4)(i) and (c)(2) to read as follows:

§ 416.999a Who is eligible for expedited reinstatement?

(a) * * *

(4) * * *

(i) You are not able or become unable to do substantial gainful activity because of your medical condition as determined under paragraph (c) of this section.

* * * * *

(c) * * *

(2) You are not able or become unable to do substantial gainful activity in the month you file your request for reinstatement; and

* * * * *

[FR Doc. 2016–10932 Filed 5–10–16; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 90

[OVW Docket No. 120]

RIN 1105–AB46

Conforming STOP Violence Against Women Formula Grant Program Regulations to Statutory Change; Definitions and Confidentiality Requirements Applicable to All OVW Grant Programs

AGENCY: Office on Violence Against Women, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations for the STOP (*Services—Training—Officers—Prosecutors*) Violence Against Women Formula Grant Program (STOP Program) and the general provisions governing Office on Violence Against Women (OVW) Programs to comply with statutory changes and reduce repetition of statutory language. Also, this document would implement statutory requirements for nondisclosure of confidential or private information relating to all OVW grant programs.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before July 11, 2016. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. OVW 120" on all electronic and written correspondence. The Department encourages the electronic submission of all comments through *http://www.regulations.gov* using the electronic comment form provided on that site. For easy reference, an electronic copy of this document is also available at the *http://www.regulations.gov* Web site. It is not necessary to submit paper comments that duplicate the electronic submission, as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express mail, they should be sent to Marnie Shiels, Office on Violence Against Women, United States Department of Justice, 145 N Street NE., 10W.100, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Marnie Shiels, Office on Violence Against Women, 145 N Street NE., Suite 10W.100, Washington, DC 20530, by telephone (202) 307–6026 or by email at *marnie.shiels@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. If you want to submit personal identifying information (such as your name and address) as part of your comment, but do not want it posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all personal identifying information that you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

I. Executive Summary

The Violence Against Women Act (VAWA) was enacted on September 13, 1994, by title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796. The STOP Program is codified at

42 U.S.C. 3796gg through 3796gg–5 and 3796gg–8. The final rule for this program, found at 28 CFR part 90, subpart B, was promulgated on April 18, 1995. General provisions affecting all OVW grant programs are found at 28 CFR part 90, subpart A.

This rule proposes to amend the general provisions applicable to all OVW grant programs and the regulations governing the STOP Program to comply with the amendments to these programs enacted by the Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, 114 Stat. 1464 (Oct. 28, 2000), the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, 119 Stat. 2960 (Jan. 5, 2006), and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Public Law 113–4, 127 Stat. 54 (Mar. 7, 2013). These proposed changes to the regulations incorporate the statutory changes, make minor technical corrections, implement enhanced administrative and planning practices for formula grantees, and streamline existing regulations to reduce repetition of statutory language.

In addition, this rule proposes to amend an existing regulatory provision, § 90.2, that sets forth certain definitions that apply to all OVW grant programs. Furthermore, the rule proposes to add a new regulatory provision, § 90.4, that would be applicable to all OVW grant programs to implement statutory amendments requiring nondisclosure of confidential or private information pertaining to victims of domestic violence, dating violence, sexual assault and stalking.

II. Background

In 1994, Congress passed the Violence Against Women Act (VAWA), a comprehensive legislative package aimed at ending violence against women. VAWA was enacted on September 13, 1994, as title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796. VAWA was designed to improve criminal justice system responses to domestic violence, sexual assault, and stalking, and to increase the availability of services for victims of these crimes. VAWA was reauthorized and amended in 2000, 2005, and 2013, with each new reauthorization making improvements to the law and adding new programs and provisions.

A. The Violence Against Women Act

VAWA recognized the need for specialized responses to violence against women given the unique barriers that impede victims from accessing assistance from the justice system. To help communities develop these specialized responses, VAWA authorized the STOP Program, among others. *See* 42 U.S.C. 3796gg through 3796gg–5 and 3796gg–8; 28 CFR part 90, subpart B.

VAWA requires a coordinated community response to domestic violence, dating violence, sexual assault and stalking crimes and encourages jurisdictions to bring together stakeholders from multiple disciplines to share information and to improve community responses. These often include victim advocates, police officers, prosecutors, judges, probation and corrections officials, health care professionals, and survivors. In some communities, these multidisciplinary teams also include teachers, leaders within faith communities, public officials, civil legal attorneys, health care providers, advocates from population-specific community-based organizations representing underserved populations, and others.

VAWA's legislative history indicates that Congress passed VAWA to improve justice system responses to violence against women. For example, Congress wanted to encourage jurisdictions to treat domestic violence as a serious crime, by instituting comprehensive reforms in their arrest, prosecution, and judicial policies. Congress was further interested in giving law enforcement and prosecutors the tools to pursue domestic violence and sexual assault cases without blaming victims for behavior that is irrelevant in determining whether a crime occurred and discouraging judges from issuing lower sentences for sexual assault crimes than for other violent crimes. VAWA was intended to bring an end to archaic prejudices throughout the justice system, provide support for victims and assurance that their attackers will be prosecuted, and focus criminal proceedings on the conduct of attackers rather than the conduct of victims.[1]

B. Violence Against Women Act of 2000

On October 28, 2000, Congress enacted the Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, 114 Stat. 1464. VAWA 2000 continued and strengthened the federal government's commitment to helping communities change the way they respond to violence against women. VAWA 2000 reauthorized critical grant programs, established new programs, and strengthened federal law. It had an emphasis on increasing responses to victims of dating violence and expanding options and services for immigrant and other vulnerable victims.

VAWA 2000 made several changes relevant to the STOP Program. First, it amended the statutory purposes for which grant funds may be used. Second, it clarified the eligibility of courts as subgrantees. Third, it modified the requirement under the STOP Program, to be eligible for funding, states must certify that victims not bear the costs for certain filing fees related to domestic violence cases. Finally, it added a new provision applicable to all OVW grant programs requiring grantees to report on the effectiveness of activities carried out with program funds.

C. Violence Against Women Act of 2005

On January 5, 2006, Congress enacted the Violence Against Women and Department of Justice Reauthorization Act (VAWA 2005), Public Law 109–162, 119 Stat. 2960. VAWA 2005 strengthened provisions of the previous Acts, including revising the STOP Program, and created a number of new grant programs. It also created a set of universal definitions and grant conditions that apply to all programs authorized by VAWA and subsequent legislation. VAWA 2005 had an emphasis on enhancing responses to sexual assault, youth victims, and victims in Indian country. Its provisions included new sexual assault focused programs, the addition of sexual assault to a number of OVW grant programs, new youth-focused programs, and the creation of a comprehensive violence against women program for tribal governments.

The revisions to the STOP Program made by VAWA 2005 included adding new purpose areas to the program and modifying the requirements for the development of state implementation plans, the allocation of funds to subgrantees, and documentation of consultation with victim service programs. VAWA 2005 also required that the regulations governing the program ensure that states would recognize and meaningfully respond to the needs of underserved populations and distribute funds intended for culturally specific services—for which the act created a new set-aside—equitably among culturally specific populations. It further amended the certification requirement under the program related to payment for forensic medical exams for victims of sexual assault and added new certifications related to prohibiting the use of polygraph examinations in sexual assault cases and to judicial notification to domestic violence offenders of laws prohibiting their possession of a firearm.

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[1] *See* S. Rep. No. 103–138, at 37–48 (Sept. 10, 1993).

D. Violence Against Women Reauthorization Act of 2013

On March 7, 2013, Congress enacted the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Public Law 113–4, 127 Stat. 54. VAWA 2013 made further improvements to the OVW grant programs, including several new requirements for the STOP Program. It also included two new historic provisions, one extending civil rights protections based on gender identity and sexual orientation and another recognizing the inherent jurisdiction of Indian tribes to prosecute non-Indians who commit certain domestic violence offenses in Indian country.[2]

VAWA 2013 amended the universal definitions and grant conditions established by VAWA 2005 for all OVW grant programs and amended and added to the STOP Program purpose areas. It also amended the requirements under the STOP Program that states develop and submit with their applications and implementation plan—including documentation of planning committee members' participation in the development of the plan—and consult and coordinate with a variety of entities and stakeholders. VAWA 2013 modified the allocation requirements governing STOP subgrants, creating a set-aside for projects addressing sexual assault, and made changes to the statute's requirement that states provide matching funds for their grant award. It also made several changes to provisions governing payment for forensic medical exams for sexual assault victims and certain filing costs related to cases of domestic violence, dating violence, sexual assault, and stalking.

E. Grants To Combat Violent Crimes Against Women

VAWA, as amended, added a part T to the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351, codified at 42 U.S.C. 3711 *et seq.*, titled Grants to Combat Violent Crimes Against Women. Part T authorizes four OVW-administered grant programs: the STOP Program, Grants to Indian Tribal Governments, the Grants to State Sexual Assault and Domestic Violence Coalitions Program (State Coalitions), and the Grants to Tribal Domestic Violence and Sexual Assault Coalitions Program (Tribal Coalitions).

The STOP Program grants are awarded to states to develop and strengthen the justice system's response to violence against women and to support and enhance services for victims. As described above, each subsequent VAWA reauthorization made numerous changes to this program, including adding purpose areas, imposing new or revised certification requirements, creating set-asides for sexual assault and culturally specific services, and making changes to the funding formula, funding allocations, and matching funds requirement.

III. Definitions and Confidentiality Requirements Applicable to All OVW Grant Programs

As discussed above, VAWA 2005 established universal definitions and grant conditions for OVW grant programs, and VAWA 2013 amended these provisions. This section describes how the proposed rule would implement these definitions, as well as a grant condition protecting the confidentiality and privacy of persons receiving victim services for the purpose of ensuring victim safety.

A. Definitions

The universal definitions added by VAWA 2005, codified at 42 U.S.C. 13925(a), superseded previous program-specific definitions originally enacted in 1994. This proposed rule would revise the definitions section of part 90, 28 CFR 90.2, by removing definitions from the existing regulations that are codified in statute, adding definitions for terms that are used in statute but not defined, and clarifying statutory definitions that, based on OVW's experience managing its grant programs, require further explanation.

Section 90.2 currently contains definitions for the following terms: domestic violence, forensic medical examination, Indian tribe, law enforcement, prosecution, sexual assault, state, unit of local government, and victim services. This proposed rule would remove the definitions for domestic violence, Indian tribe, law enforcement, sexual assault, state, and victim services, as they all appear in the statute and do not need further clarification. The proposed rule would revise the definition of "forensic medical examination," a term that is used but not defined in a statutory provision directing that states, Indian tribal governments, and units of local government may not receive STOP Program funds unless they incur the full out-of-pocket cost of forensic medical exams for victims of sexual assault. *See* 42 U.S.C. 3796gg–4(a)(1). The proposed rule would change the list of minimum elements that the exam should include to bring the definition in line with best practices for these exams as they have developed since part 90 was implemented in 1995, and, in particular, with the Department of Justice's national protocol for sexual assault medical forensic examinations, which was updated in April 2013.[3]

The proposed rule's definition of "prosecution" contains minor technical changes from the definition in the existing regulation. These changes implement the VAWA 2005 provision making the definitions applicable to all OVW grant programs and conform the definition to the statute. The definition retains the existing regulation's clarification of the statutory definition, which explains that prosecution support services fall within the meaning of the term for funding purposes. This clarification continues to be important because allocating prosecution grant funds to activities such as training and community coordination helps to achieve the statutory goal of improving prosecution response to domestic violence, dating violence, sexual assault, and stalking. In addition, the statutory definition for "prosecution" uses, but does not define, the term "public agency," which the proposed rule would define using the definition for this term in the Omnibus Crime Control and Safe Streets Act. *See* 42 U.S.C. 3791.

The proposed rule would revise the definition of "unit of local government," which did not have a statutory definition specific to all OVW grant programs until the enactment of VAWA 2013, to make it consistent with the statutory language. In addition, it would include in the definition a list of entities and organizations that do not qualify as units of local government for funding purposes and would need a unit of local government to apply on their behalf for those programs where "unit of local government" is an eligible entity but other types of public or private entities are not eligible. The list reflects OVW's long-standing interpretation of the term "unit of local government" and is consistent with OVW's practice of excluding these entities and organizations from eligibility to apply for OVW funding as units of local government.

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[2] These two provisions are not addressed in this proposed rule but were addressed in a set of frequently asked questions on the new civil rights provision and in two **Federal Register** notices related to the implementation of the new provision on tribal jurisdiction. *See* U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights, "Frequently Asked Questions: Nondiscrimination Grant Condition in the Violence Against Women Reauthorization Act of 2013" (April 9, 2014), *available at: http://www.justice.gov/sites/default/files/ovw/legacy/2014/06/20/faqs-ngc-vawa.pdf;* Pilot Project for Tribal Jurisdiction Over Crimes of Domestic Violence, 78 FR 35961 (June 14, 2013); Pilot Project for Tribal Jurisdiction Over Crimes of Domestic Violence, 78 FR 71645 (Nov. 29, 2013.

[3] U.S. Department of Justice, Office on Violence Against Women, "A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents" (2d ed. 2013), available at *https://www.ncjrs.gov/pdffiles1/ovw/241903.pdf*.

The proposed rule also would add definitions to the regulation for terms that are used in OVW grant program statutes but are undefined and that OVW believes would be helpful to applicants and grantees. The term "community-based organization" is defined in 42 U.S.C. 13925(a), but the term "community-based program," which also appears in OVW grant program statutes, is not. To preserve consistency across OVW programs and minimize confusion, OVW is proposing to use the statutory definition for both terms. The proposed rule would provide a definition of "prevention" that distinguishes the term from "outreach" both because OVW has observed that some grant applicants propose outreach activities to implement prevention programming under OVW programs and because funding for "prevention" is more limited than funding for "outreach." Finally, the proposed rule would add a definition for "victim services division or component of an organization, agency, or government" because the proposed rule uses this term in implementing the confidentiality provision enacted by VAWA 2005 and amended by VAWA 2013, which is discussed in more detail in the next section.

B. Confidentiality

VAWA 2005 added a provision on confidentiality and privacy of victim information as part of the new, universal grant conditions, and this provision was amended by VAWA 2013. *See* 42 U.S.C. 13925(b)(2). This provision recognizes the critical importance to victim safety of protecting victims' personally identifying information. It generally requires grantees and subgrantees to protect victim confidentiality and privacy to ensure the safety of victims and their families and prohibits the disclosure of victims' information without their informed, written, and reasonably time-limited consent. These requirements, implemented in proposed § 90.4(b), would be applicable to all OVW grant programs, not just STOP grants.

In administering this confidentiality provision, OVW has received numerous inquiries regarding what kinds of disclosures require written consent, and OVW is proposing to answer these questions in this rule. OVW welcomes comments on the impact of these issues on victims as well as comments on the specific proposals enumerated in this draft rule. OVW specifically requests comments in the following three areas:

(1) OVW has received numerous questions regarding how the confidentiality provision applies when the grantee is an organization or governmental entity with multiple divisions or components, some of which do not provide victim services. For example, if the grantee is a college campus, the campus administration might seek identifying information about victims served by the campus victim services division, and the victim services division would need to know whether such a disclosure is permissible under the VAWA confidentiality provision absent victim consent. OVW has included language in proposed § 90.4(b)(2)(C) providing that, for a victim services division of such an organization or governmental entity to disclose information to non-victim services divisions, it would need a signed, informed, reasonably time-limited release from the victim. Proposed § 90.2(h) would define such a victim services division as a division within a larger organization, agency, or government, where the division has as its primary purpose to assist or advocate for victims of domestic violence, dating violence, sexual assault, or stalking. Proposed section 90.4(b)(2) also would require a release for the leadership of the larger organization, agency, or government (*e.g.,* the executive director, mayor, tribal chair, etc.) to access identifying information. OVW welcomes comments on the impact of this proposal on grantees' and subgrantees' ability to protect victim confidentiality and ensure victim safety.

(2) OVW often receives questions about fatality reviews of domestic-violence-related homicides and release of information about deceased victims to individuals conducting such reviews. Fatality reviews examine the events leading up to domestic violence homicides to discover missed opportunities for intervention and points at which intervention was not effective so that communities can make systemic changes designed to improve identification, intervention, and prevention efforts in future cases. Fatality review teams usually are comprised of representatives from a wide variety of disciplines involved in responding to domestic violence incidents, including law enforcement, prosecution, judges, medical professionals, child protection workers, and community-based advocates. The proposed rule, at § 90.4(b)(4), would allow the sharing of information about deceased victims for the purpose of a fatality review, provided that (1) the objectives of the review are to prevent future deaths, enhance victim safety, and increase offender accountability, and (2) the review includes measures to protect information from release outside the fatality review team. This provision strikes a balance between recognizing the importance of such reviews and making sure that the reviews protect information about any surviving children, keeping in mind that the confidentiality provision and fatality reviews are both intended to enhance victim safety. OVW requests comments on the impact of this proposal on grantees' and subgrantees' ability to ensure the safety and privacy of victims and their families.

(3) OVW has received a number of questions about the propriety of placing victim-identifying data on third-party servers, such as those maintained by "cloud storage" companies. OVW is interested in receiving comments about whether and how such third-party servers can be used without compromising victim safety or violating the confidentiality provision at 42 U.S.C. 13925(b)(2) and whether this is an area where rulemaking would be desirable. In particular, the statutory prohibition on the disclosure of victim information applies to personally identifying or individual information collected in connection with grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected. OVW welcomes comments on how this language would apply to information stored on third-party servers.

IV. Provisions of This Proposed Rule Relating to the Stop Program

A. Introduction

The STOP Program regulations and general provisions were originally promulgated in April, 1995. On December 30, 2003, OVW published a proposed rule to clarify the match requirement for the STOP Program. On January 21, 2004, section 90.3, regarding participation by faith based organizations, was added to the general provisions. After the enactment of VAWA 2013, OVW consulted with tribal governments about the implementation of statutory changes to the STOP Program as part of the Department of Justice's annual government-to-government violence against women tribal consultations held in October 2013 and October 2014. In addition, during November and December of 2013, OVW held a series of listening sessions with relevant constituencies to solicit input on the update to the STOP Program regulations. The specific sessions were focused on state STOP Program administrators, state coalitions, culturally specific and underserved populations, tribes and tribal coalitions, nonprofit organizations, and the justice system. Sessions were an hour each and were held by phone and web interface. Participants offered a diverse array of comments during the sessions. The following section summarizes the common themes of the comments and OVW's responses.

B. Listening Sessions and Tribal Consultations

State administrators for OVW's two state formula grant programs, the STOP and Sexual Assault Services Programs, requested that OVW be flexible in administering the program and reduce the amount of documentation required from state administrators. Because the STOP Program statute, as amended by the Violence Against Women Acts of 2000, 2005, and 2013, includes many requirements for the program (such as certifications, implementation planning, allocations, equitable distribution of funds, etc.), OVW must require a significant amount of documentation to ensure compliance with all the program's statutory mandates. Therefore, the proposed regulation does include some detailed documentation requirements, particularly in the area of statutorily-mandated consultation. OVW has attempted to minimize the burden of these documentation requirements by proposing to use checklists and permit states to submit summaries of significant concerns. OVW also has provided flexibility where possible. For example, proposed § 90.12(d) leaves it to the states to determine how they will achieve and document the equitable distribution of funds.

In contrast to the state administrators, state coalitions and victim service providers advocated strict documentation requirements for implementation planning consultation to ensure that coalitions and victim service providers are fully consulted, as required by statute. Some participants described instances where they were asked to support a state plan, but were not given an opportunity to provide true input into the planning process. To address these concerns, proposed § 90.12(b) outlines a robust planning process, with involvement from all of the statutorily required parties, including state coalitions and victim service providers. Proposed § 90.12(c) requires that states document their outreach to planning committee members and the extent to which such members cooperated in the development of the plan.

State coalitions also recommended adding survivors in the state planning process. In response, proposed § 90.12(b)(4) provides that, if possible, states should include survivors of domestic violence, dating violence, sexual assault, and stalking in the planning process.

Victim service providers and groups representing underserved populations asked that organizations working with underserved populations be included in the state planning process and in the subgrantee pool. Proposed § 90.12(b)(2) requires each state to examine its demographics and include any significant culturally specific or underserved population in the planning process. If the state does not have any culturally specific or population specific organizations at the state or local level, the state can use national organizations to collaborate on the plan. Per the statute (42 U.S.C. 4796gg–1(e)(2)(D)), proposed § 90.12(e) requires states to include in their implementation plans information about how the state plans to meet the needs of identified underserved populations, including, but not limited to, culturally specific populations, victims who are underserved because of sexual orientation or gender identity, and victims with limited English proficiency. Participants in the listening sessions identified these specific populations as ones that particularly needed to be addressed by state implementation plans.

Tribal representatives and advocates from the tribal listening session and consultations strongly recommended that states meaningfully consult with *all* tribes in the state, including Alaska Native villages, during their planning process. Participants emphasized that tribal coalitions can assist state administrators in forging relationships with tribes, but do not speak for the tribes. Participants also emphasized that each tribe is a unique sovereign, and one tribe's input does not obviate the need for input from other tribes. Proposed § 90.12(b)(3) therefore provides that states must invite all state or federally recognized tribes to participate in the planning process. The statutory definition of "tribe" includes Alaska Native villages. Tribal coalitions and state or regional tribal consortia can help the state reach out to tribes but cannot be used as substitutes for consultation with all tribes.

The justice system participants recommended including probation and parole entities within the mandatory implementation planning participants. In response, proposed § 90.12(b)(5) provides that states should include probation and parole entities in their planning process.

VAWA 2013 included a new provision that permits states to reallocate grant funds from one statutory "allocation" category (*i.e.*, prosecution, law enforcement, courts, and victims services) to another. Participants in all the sessions were asked what should be required before a state could reallocate funds to a different category. Many participants recommended that there should be documentation of the state's inability to award funds to entities within the assigned allocation category and that state-wide agencies, such as the administrative office of the courts, or state coalitions might be able to help both with publicizing the availability of funds and documenting the inability to award funds. For example, some participants noted that their state's administrative office of the courts will not accept the STOP funds allocated to courts. In proposed § 90.25, OVW tried to maintain a balance between ensuring that states make legitimate efforts to identify eligible subrecipients and permitting states to reallocate the funds when their efforts to adhere to the allocation categories are unsuccessful.

Participants were asked if there are any terms that should be defined in the regulations. Several commenters recommended including a definition of "prevention" to clarify the distinction between "prevention" and "outreach". Proposed § 90.2(d) specifies that a "prevention program" is "a program that has a goal of stopping domestic violence, dating violence, sexual assault, or stalking from happening in the first place."

Participants were also asked about the best way to ensure that states coordinate with health care providers to notify victims of the availability of sexual assault forensic medical examinations as required by 42 U.S.C. 3796gg–4. The consensus of commenters was that, because both the structure of health care and available resources for this coordination vary greatly by state, the regulations should be flexible. Tribal participants also recommended including Indian Health Services in this consultation. Proposed § 90.13(e) addresses these comments by allowing states to meet this coordination obligation by partnering with associations that are likely to have the broadest reach to the relevant health care providers, such as forensic nursing or hospital associations. States with significant tribal populations are recommended to include local Indian Health Services facilities.

C. Proposed Changes to the STOP Program Regulations

In light of the statutory changes summarized above, the listening sessions with various constituencies and the tribal consultations, and OVW's experience in administering the STOP Program over the years, OVW is proposing to amend the existing STOP Program regulations in the following ways:

1. Reorganizing the Provisions of the Rule

This proposed rule would reorganize subpart B to promote a more logical flow of information, which better reflects the cycle of making and administering grants. To cite one example, the revised rule would describe the need for a state administering office, which is the starting point of a state's work under the STOP Program, at the beginning of subpart B rather than in the middle. In addition, proposed § 90.14 would implement the judicial notification requirement and proposed § 90.16 would implement the polygraph testing prohibition, which both were added by VAWA 2005. Proposed § 90.25 would implement a new provision from VAWA 2013, permitting states to reallocate STOP funds. Proposed § 90.24 would codify a long-standing OVW policy against funding activities that may compromise victim safety and recovery, based on the program's purpose to enhance victim safety and offender accountability. The following chart shows the changes from the current rule to this proposed rule.

Section No.	Current rule	Proposed disposition of current section	Proposed rule
90.10	Description of STOP (*Services—Training—Officers—Prosecutors*) Violence Against Women Formula Grant Program.	Same	STOP (*Services—Training—Officers—Prosecutors*) Violence Against Women Formula Grant Program-General.
90.11	Program Criteria	Merged with 90.10 and 90.12	State office.
90.12	Eligible Purposes	Merged with 90.10	Implementation plans.
90.13	Eligibility	Now in 90.10	Forensic medical examination payment requirement.
90.14	Forensic Medical Examination Payment Requirement.	Now 90.13	Judicial notification requirement.
90.15	Filing Costs for Criminal Charges	Same	Costs for criminal charges and protection orders.
90.16	Availability and Allocation of Funds	(a) Is now in 90.17, (b) and (c) are merged with 90.12.	Polygraph testing prohibition.
90.17	Matching Requirements	Now 90.18	Subgranting of funds.
90.18	Non-supplantation	Removed	Matching funds.
90.19	State Office	Now 90.11	Application content.
90.20	Application Content	Now 90.19	
90.21	Evaluation	Same	Evaluation.
90.22	Review of State Applications	Same	Review of State applications.
90.23	State Implementation Plan	Now 90.12	Annual grantee and subgrantee reporting.
90.24	Grantee Reporting	Now 90.23	Activities that may compromise victim safety and recovery.
90.25			Reallocation of funds.

2. Removing Duplicative Regulatory Language

OVW is proposing to remove much of the existing regulation to avoid duplication with the statute. Specifically, OVW is proposing to remove the following sections and paragraphs of the current regulation for this reason: § 90.10; § 90.11(a); § 90.12; § 90.16(a); and § 90.18. Other sections have been streamlined by referencing the statutory provision rather than repeating the statutory language.

3. Statutory Changes

As discussed above, the Violence Against Women Acts of 2000, 2005, and 2013 have amended and enhanced this program. Specific changes are as follows:

- Expanded purpose areas (incorporated by reference in proposed § 90.10)
- Changes in allocations: (1) The victim services allocation increased from 25 percent to 30 percent; (2) a set aside was added of ten percent of the victim services funds (or three percent of the total award) for culturally specific community based organizations; (3) a set aside was added of five percent to courts; and (4) a 20-percent set aside was added for programs that meaningfully address sexual assault in two or more of the specified allocations (proposed § 90.11(c))
- Changes in the implementation planning process, including an expanded list of entities that the state is required to consult with and additional information that needs to be included in a state's implementation plan (proposed § 90.12)
- Changes to the existing certification requirements and additions of new certification requirements (proposed § 90.13, forensic medical examination payment; proposed § 90.14, judicial notification; proposed § 90.15, costs for criminal charges and protection orders; and proposed § 90.16, polygraph testing prohibition)

The proposed rule also would remove references to the Assistant Attorney General for the Office of Justice Programs to reflect statutory changes made by the Violence Against Women Office Act, Title IV of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273 (Nov. 2, 2002).

4. Section-by-Section Summary of the Proposed Regulatory Text

§ 90.10 STOP (*Services—Training—Officers—Prosecutors*) Violence Against Women Formula Grant Program—General

Proposed § 90.10 lists the eligible applicants for the program and specifies that the purposes, criteria, and requirements for the program are established by 42 U.S.C. 3796gg *et seq.*

§ 90.11 State Office

Proposed § 90.11 describes the role of the State office, which is to be designated by the chief executive of the state. As detailed in proposed § 90.11(a) and (b), the State office is responsible for submitting the application, including certifications, developing the implementation plan, and administering the funds. Paragraph (c) is intended to ensure that statutorily allocated funds are meaningfully targeted to the appropriate entities and activities.

§ 90.12 Implementation Plans

As discussed above, VAWA 2013 added new requirements to the state implementation planning process. Proposed § 90.12 implements these requirements. Subsection (a) is consistent with the current § 90.23(a) and follows 42 U.S.C. 3796gg–1(i), but adds language incorporating a long-standing OVW practice of allowing states to submit a full implementation plan every three years and then updates to the plan in the other two years.

Subsections (b) and (c) are new to the regulations, but incorporate provisions from 42 U.S.C. 3796gg–1(c)(2) and (i) regarding consultation and coordination. The statute provides a list of entities that states must consult with during the implementation planning process and requires documentation from members of the planning committee as to their participation in the planning process. OVW must ensure that states consult with all the required entities and fully document such consultation. The subsections attempt to strike a balance between sufficient documentation and the burdens on state administrators inherent in providing such documentation. The proposed rule therefore would require states to submit to OVW a checklist documenting the specific extent of each partner's participation, a summary of any significant concerns that were raised during the planning process, and a description of how those concerns were resolved. In the past, when the statute required that states consult only victim service providers regarding the implementation plan, OVW heard from some state coalitions that they were being asked to document approval of an implementation plan without having any actual input into the plan. Proposed § 90.12(c) is intended to ensure meaningful collaboration with partners, while minimizing the administrative burden on states.

Based on recommendations from the tribal listening session, consultation with tribal governments must include all tribes in a state, not just a selection of tribes or organizations that work with tribes, such as tribal coalitions. In addition to the statutorily mandated planning partners, the proposed rule also encourages states to consult with probation and parole entities and survivors based on recommendations from the listening sessions.

Proposed subsection (d) implements 42 U.S.C. 3796gg–1(e)(2). This is similar to both the current § 90.16(b) and § 90.23(b). The language in current § 90.16(b) is proposed to be removed both because it is duplicative and to provide additional flexibility for states by reducing unnecessary specificity regarding how states will document compliance with this requirement.

Proposed subsection (e) implements 42 U.S.C. 3796gg–1(i)(2)(E) and includes some of the current § 90.16(b)(4). The subsection allows states the flexibility to identify underserved populations, while requiring documentation of why the specific populations were selected. The statute requires specific consideration of culturally specific populations. At the recommendation of the participants in the listening sessions, the proposed subsection also would require states to consider the needs of victims who are underserved because of sexual orientation or gender identity and victims with limited English proficiency.

Proposed paragraph (f) implements 42 U.S.C. 3796gg–1(i)(2)(G), which requires state implementation plans to include goals and objectives for reducing domestic violence-related homicide. The proposed subsection requires states to provide statistics on domestic violence homicide within the state, consult with relevant entities such as law enforcement and victim service providers, and establish specific goals and objectives to reduce homicide, including addressing challenges specific to the state and how the plan can overcome them.

Proposed subsection (g) outlines additional content that implementation plans must include, as follows:

(1) Current demographic information regarding a state's population

(2) A description how the state will reach out to community-based organizations that provide linguistically and culturally specific services

(3) A description of how the state will meet the needs of each category of victims (domestic violence, dating violence, sexual assault, and stalking) and how the state will hold offenders accountable

(4) A description of how the state will ensure that eligible entities are aware of funding opportunities

(5) Information on specific projects the state plans to fund

(6) An explanation of how the state coordinated the plan with other relevant state formula grant administering agencies as required by 42 U.S.C. 3796gg–1(c)(3)

(7) Information on the state's compliance with the Prison Rape Elimination Act (PREA, Pub. L. 108–79) and how the state plans to use program funds towards compliance, if applicable

(8) A description of how the state will identify and select applicants for subgrants

These required elements are designed to help OVW ensure that states follow statutory requirements for the program and to provide a better understanding of how the state plans to allocate its STOP Program funds. Proposed paragraph (7), regarding PREA, is designed to ensure that states that submit assurances under PREA that they will spend five percent of "covered funds" towards compliance with PREA are including such funds in their planning.

Proposed subsection (h) implements a change in VAWA 2013 that makes the implementation plans due at the time of application rather than 180 days after award.

§ 90.13 Forensic Medical Examination Payment Requirement

Section 3796gg–4 of Title 42 requires states to ensure that the state or another governmental entity bears the "full out-of-pocket" costs of sexual assault medical forensic examinations. Proposed § 90.13(b) provides a definition of "full out-of-pocket costs." Proposed subsection (c) is the same as current § 90.14(c), but text has been removed to reflect the fact that VAWA 2005 changed the statute to allow states to use STOP Formula grant funds to pay for forensic exams if certain requirements are met. Proposed subsection (d) would clarify that, if states use victims' personal health insurance to pay for the exams, they must ensure that any expenses not covered by insurance are not billed to the victims, as these would constitute "out-of-pocket" costs. Proposed subsection (e) would implement a new provision from VAWA 2013 (42 U.S.C.

3796gg–4(a)(1)(B)), which requires states to coordinate with health care providers in the region to notify victims of the availability of forensic examinations.

§ 90.14 Judicial Notification Requirement

Proposed § 90.14 implements the requirements of 42 U.S.C. 3796gg–4(e), which provides that states and units of local government are not entitled to funds unless they certify that their judicial administrative policies and practices include notification to domestic violence offenders of relevant federal, state, and local firearms prohibitions that might affect them. This requirement was added by VAWA 2005.

§ 90.15 Costs for Criminal Charges and Protection Orders

Proposed § 90.15 would implement the requirements of 42 U.S.C. 3796gg–5, which provides that states, tribes, and units of local government are not entitled to funds unless they certify that victims of domestic violence, dating violence, sexual assault, or stalking are not charged certain costs associated with criminal prosecution or protection orders. These requirements were amended by VAWA 2000 and VAWA 2013.

§ 90.16 Polygraph Testing Prohibition

Proposed § 90.16 would implement 42 U.S.C. 3796gg–8, which provides that, to be eligible for STOP Program funding, states, tribes, and units of local government must certify that their laws, policies, and practices ensure that law enforcement officers, prosecutors, and other government officials do not ask or require sexual assault victims to submit to a polygraph examination or other truth telling device as a condition for investigating the offense. These requirements were added by VAWA 2005.

§ 90.17 Subgranting of Funds

Proposed § 90.17(a) describes the type of entities that can receive subgrants from the state (state agencies and offices, courts, local governments, public agencies, tribal governments, victim service providers, community-based organizations, and legal services programs). This is currently addressed in § 90.13(a), but it has been separated out for clarity and expanded to reflect statutory changes to the STOP Program and the types of entities that, in practice, receive subgrants under this program.

Proposed § 90.17(b) would allow states to use up to ten percent of each allocation category (law enforcement, prosecution, victim services, courts, and discretionary) to support the state's administrative costs. Examples of such costs include the salary and benefits of staff who administer the program and costs of conducting peer review. This proposed subsection codifies a long-standing OVW policy regarding state administrative costs.

§ 90.18 Matching Funds

Proposed § 90.18 would implement the match provisions of 42 U.S.C. 3796gg–1(f) and 13925(b)(1). This topic is currently addressed in § 90.17. VAWA 2005 provided that match could not be required for subgrants to tribes, territories, or victim service providers. It also authorized a waiver of match for states that have "adequately demonstrated [their] financial need." 42 U.S.C. 13925(b)(1). VAWA 2013 further specified that the costs of subgrants for victim services or tribes would not count toward the total amount of the STOP award in calculating match. 42 U.S.C. 3796gg–1(f).

Proposed subsection (a) states the match requirement in general and reflects that the match requirement does not apply to territories.

Proposed subsection (b) would allow for in-kind match, consistent with 2 CFR 200.306, and provide information on calculating the value of in-kind match.

Proposed subsection (c) would provide that states may not require match for subgrants for Indian tribes or victim service providers. This is consistent with 42 U.S.C. 13925(b)(1), as added by VAWA 2005.

Proposed subsection (d) would implements the waiver provisions of 42 U.S.C. 13925(b)(1), as added by VAWA 2005. In developing the criteria for waiver, OVW balanced the importance of state and local support for the efforts funded under the STOP Program with the need for waiver where there is legitimate financial need. The proposed subsection would ensure that the needs identified by the state are specifically tied to funding for violence against women programs. For example, if a state has had across the board budget cuts, it would need to show how those cuts have impacted state funding for violence against women programs (and hence, its ability to provide matching funds). In most cases, a state would receive a partial waiver based on the specific impact of the cuts. For example, if the state had a 20-percent reduction in violence against women funding, then it would receive a 20-percent waiver. The 20-percent cut should leave the state with 80-percent of funds that could still be used toward match. In most cases, the states pass the match on to subgrantees, except for Indian tribes and victim service providers. In cases of awards to Indian tribes or awards to victim service providers for victim services purposes (as opposed to another purpose, such as law enforcement training) the state is exempted from the match requirement.

Proposed subsection (e) would provide that matching funds must be used for the same purposes as the federal funds and must be tracked for accountability purposes. This is consistent with the current § 90.17(e).

§ 90.19 Application Content

Proposed § 90.19 would provide that states will apply for STOP Program funding using an annual solicitation issued by OVW. The proposed section differs from the current § 90.20 to reflect current practice and significant changes that VAWA 2013 made to the application process. Prior to fiscal year 2014 (the year that VAWA 2013 amendments to the STOP Program took effect), a STOP application included certain documentation and information, such as documentation from the prosecution, law enforcement, court, and victim service programs to be assisted, demonstrating the need for funds, the intended use of the funds, expected results, and demographic characteristics of the population to be served. The state then had 180 days from the date of award to complete and submit its implementation plan, which included more detail. VAWA 2013 streamlined this process by including most information and documentation in the implementation plan, but also requiring the plan to be submitted at the time of application.

§ 90.21 Evaluation

Proposed § 90.21 would encourage states to have plans for evaluating the impact and effectiveness of their programs and requires them to cooperate with federally-sponsored evaluations of their programs. This is generally consistent with current § 90.21.

§ 90.22 Review of State Applications

Proposed § 90.22 would provide the basis for review of state applications and implement the single point of contact requirement of Executive Order 12372 (Intergovernmental Review of Federal Programs). Current subsection (c) has been removed because OVW is no longer part of the Office of Justice Programs (OJP) and the section is no longer relevant.

§ 90.23 Annual Grantee and Subgrantee Reporting

Proposed § 90.23 describes the annual reporting requirement for the program. Subgrantees submit annual progress reports to the state, which then forwards them to OVW. States also submit an annual progress report. Information on progress reports, along with the forms and instructions are available at *http://muskie.usm.maine.edu/vawamei/stopformulamain.htm*. This is different from the current § 90.24 because OVW's grant reporting processes have changed, and OVW is no longer a component within OJP.

§ 90.24 Activities That May Compromise Victim Safety and Recovery

Proposed § 90.24 would provide that grant funds may not be used to support activities that compromise victim safety and recovery. This proposed section is based on the overall purpose of the Violence Against Women Act to enhance victim safety. Specific examples of such activities are included in the STOP Program solicitation each year. For example, past solicitations explained that such unsafe activities include procedures or policies that exclude victims from receiving safe shelter, advocacy services, counseling, and other assistance based on their actual or perceived age, immigration status, race, religion, sexual orientation, gender identity, mental health condition, physical health condition, criminal record, work in the sex industry, or the age and/or gender of their children.

§ 90.25 Reallocation of Funds

Proposed § 90.25 implements a new provision from VAWA 2013 (42 U.S.C. 3796gg–1(j)), which allows states to reallocate funds in the law enforcement, prosecution, courts, and victim services (including culturally specific services) allocation categories if they did not receive "sufficient eligible applications." The proposed section defines an "eligible" application and provides the information that states must have on file to document a lack of sufficient eligible applications. The proposed section would ensure that states conduct sufficient outreach to the eligible category of subgrantees before reallocating the funds.

V. Request for Comments

OVW is soliciting comments on the proposed amendments to part 90 subparts A and B. OVW welcomes all comments, including comments on specific sections of the rule.

Regulatory Certifications

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review," section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," section 1(b). General Principles of Regulation.

The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, § 3(f) because it is not likely to: (1) Have an annual effect on the economy of $100 million or more; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues.

(1) The rule's impact is limited to OVW grant funds. It does not change the economic impact of the grant funds and will impose very few economic costs, as discussed below.

(2) The Department of Health and Human Services (HHS) has a similar program under the Family Violence Prevention and Services Act (FVPSA), which uses some of the same definitions and a similar confidentiality provision. OVW and the HHS FVPSA office coordinate to ensure consistency in implementation of programs.

(3) The requirements in the rule are statutory and apply only to OVW grantees. In some cases, OVW has added some additional specificity to clarify the statutory requirements. The rule provides details on what information the states must provide as "documentation," but does not impose new requirements.

(4) This rule does not raise any novel legal or policy issues.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and to select regulatory approaches that maximize net benefits. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits. In most cases, the proposed rule simply clarifies the statutory requirements, such as providing definitions, that would not have any cost or might reduce costs by providing administrators with clear guidance.

OVW provides the following analysis of the most noteworthy costs, benefits, and alternative choices.

Subpart A. In general, most of this subsection comes from the statute. OVW developed all of these provisions to answer questions received regularly from grantees and provide greater clarity for grantees and save them the time and effort of analyzing the requirements and seeking further guidance from OVW staff. Under the proposed rule, the victim service component will need a victim release to share the information. The use of the release will increase the degree of control that the victim has over his/her information, which is widely considered a best practice in the violence against women field. The cost of the proposed rule is the time and administrative burden in executing and tracking the release. This cost cannot be quantified, however, because the discussion of release with the victim would take place in the context of a larger conversation between the victim and the service provider about options for the victim and next steps. OVW considered whether to prevent the release of information about deceased victims in the context of fatality reviews, out of consideration for surviving family members, but concluded that the proposed rule could include protections that would meet the would meet the needs of the fatality reviews while protecting the privacy of surviving family members.

Subpart B. In general, proposed changes to subpart B reflect a balance between the burden on the state Administrators and the need to ensure compliance with the statute. The relevant statute requires state implementation plans which must identify how the state will use STOP funds and meet certain statutory requirements. OVW opted to require full plans only every three years to reduce the burden on states in developing these plans. In the other years, states only submit updates to their plans.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Office on Violence Against Women, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reason: Except for the match provisions in proposed § 90.18, the direct economic impact is limited to the Office on Violence Against Women's appropriated funds. For more information on economic impact, please see above.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This rule will not result in substantial direct increased costs to Indian Tribal governments. The definitions and confidentiality provisions of the rule will impact grantees that are tribes. OVW currently has 246 active awards to 159 tribes, for a total of over $140 million. As discussed above, any financial costs imposed by the rule are minimal.

In addition, although a small number of tribes are subgrantees of the STOP Formula Program, discussed in subpart B, the requirements of the rule are imposed on grantees, not subgrantees. The one provision in subpart B that will have a direct effect on tribes is proposed § 90.12(b)(3), which implements the statutory requirement that states consult with "tribal governments in those States with State or federally recognized Indian tribes." 42 U.S.C. 3796gg–1(c)(2)(F). The proposed rule would require states to invite all State or federally recognized tribes in the state to participate in the planning process. This approach was recommended by tribal participants in the tribal listening session and at OVW's annual government-to-government tribal consultations in 2013 and 2014.

As discussed above, OVW included regulatory implementation of statutory changes to the STOP Program as a topic at its annual tribal consultations in 2013 and 2014. At the 2013 consultation, tribal leaders were asked for testimony on terms that should be defined in the regulations, additional entities that states should consult with in developing their implementation plans, how states should document the participation of planning committee members, and how states should consult with tribes, among other specific questions. The questions presented at the 2014 consultation included how states might better consult with tribes during STOP implementation planning, and how states should include tribes in the equitable distribution of funds for underserved populations and culturally specific services. At both consultations, tribal leaders emphasized the importance of states engaging in meaningful consultation with all tribes in their state. Tribal leaders noted that such consultation should involve a cooperative decision making process designed to reach consensus before a decision is made or action is taken, and that effective consultation leads to an implementation plan that takes into account the needs of tribes. Tribal leaders also pointed out that a state's failure to consult with tribes can prevent tribes from accessing STOP funds or even being aware that they are available. Finally, testimony at the tribal consultations raised concerns about states asking tribal shelters to volunteer to provide matching funds in order to receive STOP subgrant funding.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

List of Subjects in 28 CFR Part 90

Grant programs; Judicial administration.

For the reasons set forth in the preamble, the Office on Violence Against Women proposes to amend 28 CFR part 90 as follows:

PART 90—VIOLENCE AGAINST WOMEN

■ 1. The authority for part 90 is revised to read as follows:

Authority: 42 U.S.C. 3711 *et seq.;* 42 U.S.C. 13925.

Subpart A—General Provisions

■ 2. Section 90.1 is revised to read as follows:

§ 90.1 General

(a) This part implements certain provisions of the Violence Against Women Act (VAWA), and subsequent legislation as follows:

(1) The Violence Against Women Act (VAWA), Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322 (Sept. 13, 1994);

(2) The Violence Against Women Act of 2000 (VAWA 2000), Division B of the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386 (Oct. 28, 2000);

(3) The Violence Against Women Office Act, Title IV of the 21st Century Department of Justice Appropriations Authorization Act, Public Law 107–273 (Nov. 2, 2002);

(4) The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162 (January 5, 2006); and,

(5) The Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Public Law 113–4 (Mar. 7, 2013).

(b) Subpart B of this part defines program eligibility criteria and sets forth requirements for application for and administration of formula grants to States to combat violent crimes against women. This program is codified at 42 U.S.C. 3796gg through 3796gg–5 and 3796gg–8.

(c) Subpart C of this part was removed on September 9, 2013.

(d) Subpart D of this part defines program eligibility criteria and sets forth requirements for the discretionary Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

■ 3. Section 90.2 is revised to read as follows:

§ 90.2 Definitions

(a) In addition to the definitions in this section, the definitions in 42 U.S.C. 13925(a) apply to all grants awarded by the Office on Violence Against Women and all subgrants made under such awards.

(b) The term "community-based program" has the meaning given the term "community-based organization" in 42 U.S.C. 13925(a).

(c) The term "forensic medical examination" means an examination provided to a sexual assault victim by medical personnel to gather evidence of a sexual assault in a manner suitable for use in a court of law.

(1) The examination should include at a minimum:

(A) Gathering information from the patient for the forensic medical history;

(B) head to toe examination of the patient;

(C) documentation of biological and physical findings; and

(D) collection of evidence from the patient.

(2) Any costs associated with the items listed in paragraph (1), such as equipment or supplies, are considered part of the "forensic medical examination."

(3) The inclusion of additional procedures (*e.g.*, testing for sexually transmitted diseases) may be determined by the State, Indian tribal government, or unit of local government in accordance with its current laws, policies, and practices.

(d) A prevention program is a program that has a goal of stopping domestic violence, dating violence, sexual assault, or stalking from happening in the first place. Prevention is distinguished from "outreach," which has the goal of informing victims and potential victims about available services.

(e) The term "prosecution" means any public agency charged with direct responsibility for prosecuting criminal offenders, including such agency's component bureaus (such as governmental victim services programs). Public agencies that provide prosecution support services, such as overseeing or participating in Statewide or multi-jurisdictional domestic violence task forces, conducting training for State, tribal, or local prosecutors or enforcing victim compensation and domestic violence-related restraining orders also fall within the meaning of "prosecution" for purposes of this definition.

(f) The term "public agency" has the meaning provided in 42 U.S.C. 3791.

(g) For the purpose of this part, a "unit of local government" is any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State.

The following are not considered units of local government for purposes of this part:

- Police departments;
- Pre-trial service agencies;
- District or city attorneys' offices;
- Sheriffs' departments;
- Probation and parole departments;
- Shelters;
- Nonprofit, nongovernmental victim service agencies including faith-based or community organizations; and
- Universities.

(h) The term "Victim services division or component of an organization, agency, or government" refers to a division within a larger organization, agency, or government, where the division has as its primary purpose to assist or advocate for domestic violence, dating violence, sexual assault, or stalking victims and has a documented history of work concerning such victims.

■ 4. Section 90.4 is added to read as follows:

§ 90.4 Grant conditions

(a) In addition to the grant conditions in paragraphs (b) and (c), the grant conditions in 42 U.S.C. 13925(b) apply to all grants awarded by the Office on Violence Against Women and all subgrants made under such awards.

(b) Nondisclosure of confidential or private information.

(1) In general. In order to ensure the safety of adult, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking and their families, grantees and subgrantees under this part shall protect the confidentiality and privacy of persons receiving services.

(2) Nondisclosure.

(i) Subject to paragraph (b)(2)(iii), grantees and subgrantees shall not disclose any personally identifying information or individual information collected in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed, or otherwise protected.

(ii) This subsection applies whether the information is being requested for a Department of Justice grant program or another Federal agency, State, tribal, or territorial grant program. This subsection also limits disclosures by subgrantees to grantees, including disclosures to Statewide or regional databases.

(C) This subsection also applies to disclosures from the victim services divisions or components of an organization, agency, or government to other non-victim service divisions within an organization, agency, or government. It also applies to disclosures from victim services divisions or components of an organization, agency, or government to the leadership of the organization, agency, or government (*e.g.*, executive director or chief executive). Such executives shall have access without releases only in extraordinary and rare circumstances.

(3) Release.

(i) Personally identifying information or individual information that is collected as described in paragraph (b)(2) may not be released except under the following circumstances:

(A) the victim signs a release as provided in paragraph (b)(3)(ii);

(B) release is compelled by statutory mandate, which includes mandatory child abuse reporting laws; or

(C) release is compelled by court mandate.

(ii) Victim releases must meet the following criteria—

(A) Releases must be written, informed, and reasonably time-limited. Grantees and subgrantees may not use a blanket release and must specify the scope and limited circumstances of any disclosure. At a minimum, grantees and subgrantees must inform victims why the information might be shared, who would have access to the information, and what information could be shared under the terms of the release. A release must specify the duration for which information may be shared. The reasonableness of this time period will depend on the specific situation.

(B) Grantees and subgrantees may not require consent to release of information as a condition of service.

(C) Releases must be signed by the victim unless the victim is a minor who lacks the capacity to consent to release or is a legally incapacitated person and has a court-appointed guardian. Except as provided in paragraph (b)(3)(ii)(D), in the case of an unemancipated minor, the release must be signed by the minor and a parent or guardian; in the case of a legally incapacitated person, it must be signed by a legally-appointed guardian. Consent may not be given by the abuser of the minor or incapacitated person or the abuser of the other parent of the minor.

(D) If the minor or person with a legally appointed guardian is permitted by law to receive services without the parent's or guardian's consent, the minor or person with a guardian may consent to release information without additional consent.

(iv) If the release is compelled by statutory or court mandate, grantees and subgrantees must make reasonable efforts to notify victims affected by the disclosure and take steps necessary to protect the privacy and safety of the affected persons.

(4) Fatality reviews. The prohibition on sharing identifying information does not apply to information about deceased victims being sought for purposes of a

fatality review, assuming the fatality review meets the following requirements:

(i) The underlying objectives of the fatality review are to prevent future deaths, enhance victim safety, and increase offender accountability; and

(ii) The fatality review includes policies or protocols to protect identifying information, including identifying information about the victim's children, from further release outside the fatality review team.

(5) Confidentiality assessment and assurances. Grantees and subgrantees are required to document their compliance with the requirements of this subsection. All applicants for Office on Violence Against Women funding are required to submit a signed acknowledgement form, indicating that they have notice that, if awarded funds, they will be required to comply with the provisions of this subsection, will mandate that subgrantees, if any, comply with this provision, and will create and maintain documentation of compliance, such as policies and procedures for release of victim information, and will mandate that subgrantees, if any, will do so as well.

(c) Reports. An entity receiving a grant under this part shall submit to the Office on Violence Against Women reports detailing the activities undertaken with the grant funds. These reports must comply with the requirements set forth in 2 CFR 200.328 and provide any additional information that the Office on Violence Against Women requires.

■ 5. Subpart B is revised to read as follows:

Subpart B—The STOP (*Services—Training—Officers—Prosecutors*) Violence Against Women Formula Grant Program

90.10 STOP (*Services—Training—Officers—Prosecutors*) Violence Against Women Formula Grant Program—General
90.11 State office
90.12 Implementation plans
90.13 Forensic medical examination payment requirement
90.14 Judicial notification requirement
90.15 Costs for criminal charges and protection orders
90.16 Polygraph testing prohibition
90.17 Subgranting of funds
90.18 Matching funds
90.19 Application content
90.20 [Reserved]
90.21 Evaluation
90.22 Review of State applications
90.23 Annual grantee and subgrantee reporting
90.24 Activities that may compromise victim safety and recovery
90.25 Reallocation of funds

§ 90.10 STOP (*Services—Training—Officers—Prosecutors*) Violence Against Women Formula Grant Program—General

The purposes, criteria, and requirements for the STOP Violence Against Women Formula Grant Program are established by 42 U.S.C. 3796gg *et seq.* Eligible applicants for the program are the 50 States, American Samoa, Guam, Puerto Rico, Northern Mariana Islands, U.S. Virgin Islands, and the District of Columbia, hereinafter referred to as "States".

§ 90.11 State office

(a) Statewide plan and application. The chief executive of each participating State shall designate a State office for the purposes of:

(1) Certifying qualifications for funding under this program;

(2) developing a Statewide plan for implementation of the STOP Violence Against Women Formula Grants as described in section 90.12; and

(3) preparing an application to receive funds under this program.

(b) Administration and fund disbursement. In addition to the duties specified by subsection (a) of this section, the State office shall:

(1) Administer funds received under this program, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements; and

(2) Coordinate the disbursement of funds provided under this part with other State agencies receiving Federal, State, or local funds for domestic violence, dating violence, sexual assault, or stalking prosecution, prevention, treatment, education, victim services, and research activities and programs.

(c) Allocation requirement.

(1) The State office shall allocate funds as provided in 42 U.S.C. 3796gg–1(c)(4) to courts and for law enforcement, prosecution, and victim services (including funds that must be awarded to culturally specific community-based organizations).

(2) The State office shall ensure that the allocated funds benefit law enforcement, prosecution and victim services and are awarded to courts and culturally specific community-based organizations. In ensuring that funds benefit the appropriate entities, if funds are not subgranted directly to law enforcement, prosecution, and victim services, the State must require demonstration from the entity to be benefitted in the form of a memorandum of understanding signed by the chief executives of both the entity and the subgrant recipient, stating that the entity supports the proposed project and agrees that it is to the entity's benefit.

(3) Culturally Specific Allocation. 42 U.S.C. 13925 defines "culturally specific" as primarily directed toward racial and ethnic minority groups (as defined in 42 U.S.C. 300u–6(g)). An organization will qualify for funding for the culturally specific allocation if its primary mission is to address the needs of racial and ethnic minority groups or if it has developed a special expertise regarding a particular racial and ethnic minority group. The organization must do more than merely provide services to the targeted group; rather, the organization must provide culturally competent services designed to meet the specific needs of the target population.

(4) Sexual Assault Set Aside. As provided in 42 U.S.C. 3796gg–1(c)(5), the State must also award at least 20 percent of the total State award to projects in two or more allocations in 42 U.S.C. 3796gg–1(c)(4) that meaningfully address sexual assault. States should evaluate whether the interventions are tailored to meet the specific needs of sexual assault victims including ensuring that projects funded under the set aside have a legitimate focus on sexual assault and that personnel funded under such projects have sufficient expertise and experience on sexual assault. States may assess the percentage that a project addresses sexual assault and count that percentage of the project toward the set aside.

§ 90.12 Implementation plans

(a) In general. Each State must submit a plan describing its identified goals under this program and how the funds will be used to accomplish those goals. The plan must include all of the elements specified in 42 U.S.C. 3796gg–1(i). The plan will cover a three-year period. In years two and three of the plan, each State must submit information on any updates or changes to the plan, as well as updated demographic information.

(b) Consultation and coordination. In developing this plan, a State must consult and coordinate with the entities specified in 42 U.S.C. 3796gg–1(c)(2).

(1) This consultation process must include at least one sexual assault victim service provider and one domestic violence victim service provider and may include other victim service providers.

(2) In determining what population specific organizations, representatives from underserved populations, and culturally specific organizations to

include in the consultation process, States should look at the demographics of their State and include any significant underserved and culturally specific populations in the State. This includes organizations working with lesbian, gay, bisexual, and transgender (LGBT) people and organizations that focus on people with limited English proficiency. If the State does not have any culturally specific or population specific organizations at the State or local level, the State can use national organizations to collaborate on the plan.

(3) States must invite all State or Federally recognized tribes to participate in the planning process. Tribal coalitions and State or regional tribal consortia can help the State reach out to the tribes but can not be used as a substitute for consultation with all tribes.

(4) If possible, States should include survivors of domestic violence, dating violence, sexual assault, and stalking in the planning process.

(5) States should also include probation and parole entities in the planning process.

(6) As provided in 42 U.S.C. 3796gg–1(c)(3), States must also coordinate the plan with the State plan for the Family Violence Prevention and Services Act (42 U.S.C. 10407), the State Victim Assistance Formula Grants under the Victims of Crime Act (42 U.S.C. 10603), and the Rape Prevention and Education Program (42 U.S.C. 280b–1b). The purposes of this coordination process are to provide greater diversity of projects funded and leverage efforts across the various funding streams.

(7) Although all of the entities specified in 42 U.S.C. 3796gg–1(c)(2) must be consulted, they do not all need to be on the "planning committee." The planning committee must include the following, at a minimum:

(i) The State domestic violence and sexual assault coalitions as defined by 42 U.S.C. 13925(a)(32) and (33) (or dual coalition)

(ii) A law enforcement entity or State law enforcement organization

(C) A prosecution entity or State prosecution organization

(D) A court or the State Administrative Office of the Courts

(E) Representatives from tribes, tribal organizations, or tribal coalitions

(F) Population specific organizations representing the most significant underserved populations and culturally specific populations in the State other than tribes, which are addressed separately.

(8) The full consultation should include more robust representation from each of the required groups as well as all State and Federally recognized tribes.

(c) Documentation of consultation. As part of the implementation plan, the grantee must submit a checklist documenting the type and extent of each entity's or individual's participation in the planning process, as well as major issues that were raised during the process and how they were resolved. This must include all of the entities specified in both subsection (b) and in 42 U.S.C. 3796gg–1(c)(2).

(1) The State must retain documentation regarding attendees at all planning meetings.

(2) For in-person meetings, the State should use and retain a sign-in sheet with name, title, organization, which of the required entity types (*e.g.*, tribal government, population specific organization, prosecution, courts, State coalition) the person is representing, phone number, email address, and signature.

(3) For phone or online meetings, attendees should "sign-in" by emailing or faxing that they are on the call and the State should retain these emails and/or faxes.

(4) The State must create a summary of major concerns that were raised during the development process and how they were addressed, or why they awere not addressed. This should be sent to the planning committee along with any draft implementation plan and with the final plan.

(5) The State must keep track of any method of document review that occurred outside the context of a meeting, such as to whom the draft implementation plan was sent, how it was sent (for example by email versus mail), and who responded. Although States do not need to note every comment and how it was addressed, if there are serious or significant concerns with the draft implementation plan, these should be added to the summary of major concerns described above.

(6) The State must create and submit to the Office on Violence Against Women a checklist for each planning committee member that documents, at a minimum, whether they were informed of meetings, whether they attended meetings, whether they were given drafts of the implementation plan to review, whether they submitted comments on the draft, and whether they received a copy of the final plan and the State's summary of major concerns. The checklist should also include space for participants to include any major concerns that they have with the final plan. Each participant should check the appropriate categories on the checklist, sign the form, and return it to the State, which will attach the checklists to the plan when submitting the plan to the Office on Violence Against Women.

(7) Only the checklists and summary of significant concerns must be sent to OVW with the implementation plans. The remaining documentation described above must be kept on file by the State.

(d) Equitable distribution. The implementation plan must describe, on an annual or three-year basis, how the State, in disbursing monies, will:

(1) Give priority to areas of varying geographic size with the greatest showing of need based on the range and availability of existing domestic violence and sexual assault programs in the population and geographic area to be served in relation to the availability of such programs in other such populations and geographic areas, including Indian reservations;

(2) Determine the amount of subgrants based on the population and geographic area to be served;

(3) Equitably distribute monies on a geographic basis including nonurban and rural areas of various geographic sizes; and

(4) Recognize and meaningfully respond to the needs of underserved populations and ensure that monies set aside to fund linguistically and culturally specific services and activities for underserved populations are distributed equitably among those populations.

(e) Underserved populations. Each State has flexibility to determine the methods it uses for identifying underserved populations within the State, which may include public hearings, needs assessments, task forces, and United States Census Bureau data. The implementation plan must include details regarding the methods used and the results of those methods. It must also include information on how the State plans to meet the needs of identified underserved populations, including, but not limited to, culturally specific populations, victims who are underserved because of sexual orientation or gender identity, and victims with limited English proficiency.

(f) Goals and objectives for reducing domestic violence homicide. As required in 42 U.S.C. 3796gg–1(i)(2)(G), State plans must include goals and objectives for reducing domestic violence homicide.

(1) The plan must include available statistics on the rates of domestic violence homicide within the State.

(2) As part of the State's consultation with law enforcement, prosecution, and victim service providers, the State and

these entities should discuss and document the perceived accuracy of these statistics and the best ways to address domestic violence homicide.

(3) The plan must identify specific goals and objectives for reducing domestic violence homicide, based on these discussions, which include challenges specific to the State and how the plan can overcome them.

(g) Additional contents. State plans must also include the following:

(1) Demographic information regarding the population of the State derived from the most recent available United States Census Bureau data including population data on race, ethnicity, age, disability, and limited English proficiency.

(2) A description of how the State will reach out to community-based organizations that provide linguistically and culturally specific services.

(3) A description of how the State will address the needs of sexual assault victims, domestic violence victims, dating violence victims, and stalking victims, as well as how the State will hold offenders who commit each of these crimes accountable.

(4) A description of how the State will ensure that eligible entities are aware of funding opportunities, including projects serving underserved populations as defined by 42 U.S.C. 13925(a).

(5) Information on specific projects the State plans to fund.

(6) An explanation of how the State coordinated the plan as described in paragraph (b)(6) and the impact of that coordination on the contents of the plan.

(7) Information on the status of the State's compliance with the Prison Rape Elimination Act standards (28 CFR part 115) and how the State plans to use STOP Violence Against Women Formula Grant Program funds towards compliance, if applicable.

(8) A description of how the State will identify and select applicants for subgrant funding, including whether a competitive process will be used.

(h) Deadline. State plans will be due at application. If the Office on Violence Against Women determines the submitted plan is incomplete, the State will receive the award, but will not be able to access funding until the plan is completed and approved. The State will have 60 days from the award date to complete the plan. If the State does not complete it in that time, then the funds will be deobligated and the award closed.

§ 90.13 Forensic medical examination payment requirement

(a) To be eligible for funding under this program, a State must meet the requirements at 42 U.S.C. 3796gg–4(a)(1) with regard to incurring the full out-of-pocket costs of forensic medical examinations for victims of sexual assault.

(b) "Full out-of-pocket costs" means any expense that may be charged to a victim in connection with a forensic medical examination for the purpose of gathering evidence of a sexual assault (*e.g.*, the full cost of the examination, an insurance deductible, or a fee established by the facility conducting the examination). For individuals covered by insurance, full out-of-pocket costs means any costs that the insurer does not pay.

(c) Coverage of the cost of additional procedures (*e.g.*, testing for sexually transmitted diseases) may be determined by the State or governmental entity responsible for paying the costs.

(d) States may only use the victims' private insurance as a source of payment for the exams if they are not using STOP Violence Against Women Formula Grant Program funds to pay for the cost of the exams. In addition, any expenses not covered by the insurer must be covered by the State or other governmental entity and cannot be billed to the victim. This includes any deductibles or denial of claims by the insurer.

(e) The State or other governmental entity responsible for paying the costs of forensic medical exams must coordinate with health care providers in the region to notify victims of sexual assault of the availability of rape exams at no cost to the victims. States can meet this obligation by partnering with associations that are likely to have the broadest reach to the relevant health care providers, such as forensic nursing or hospital associations. States with significant tribal populations should also consider reaching out to local Indian Health Services facilities.

§ 90.14 Judicial notification requirement

(a) To be eligible for funding under this program, a State must meet the requirements of 42 U.S.C. 3796gg–4(e) with regard to judicial notification to domestic violence offenders of federal prohibitions on their possession of a firearm or ammunition in 18 U.S.C. 922(g)(8) and (9) and any applicable related Federal, State, or local laws.

(b) A unit of local government shall not be eligible for subgrants from the State unless it complies with the requirements of 42 U.S.C. 3796gg–4(e) with respect to its judicial administrative policies and practices.

§ 90.15 Costs for criminal charges and protection orders

(a) To be eligible for funding under this program, a State must meet the requirements of 42 U.S.C. 3796gg–5 with regard to not requiring victims to bear the costs for criminal charges and protection orders in cases of domestic violence, dating violence, sexual assault, or stalking.

(b) An Indian tribal government, unit of local government, or court shall not be eligible for subgrants from the State unless it complies with the requirements of 42 U.S.C. 3796gg–5 with respect to its laws, policies, and practices not requiring victims to bear the costs for criminal charges and protection orders in cases of domestic violence, dating violence, sexual assault, or stalking.

§ 90.16 Polygraph testing prohibition

(a) To be eligible for funding under this program, a State must meet the requirements of 42 U.S.C. 3796gg–8 with regard to restricting polygraph testing of sexual assault victims.

(b) An Indian tribal government or unit of local government shall not be eligible for subgrants from the State unless it complies with the requirements of 42 U.S.C. 3796gg–8 with respect to its laws, policies, or practices restricting polygraph testing of sexual assault victims.

§ 90.17 Subgranting of funds

(a) In general. Funds granted to qualified States are to be further subgranted by the State to agencies, offices, and programs including, but not limited to, State agencies and offices; State and local courts; units of local government; public agencies; Indian tribal governments; victim service providers; community-based organizations; and legal services programs to carry out programs and projects to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women, and to develop and strengthen victim services in cases involving violent crimes against women, and specifically for the purposes listed in 42 U.S.C. 3796gg(b) and according to the allocations specified in 42 U.S.C. 3796gg–1(c)(4) for law enforcement, prosecution, victim services, and courts.

(b) Administrative Costs. States are allowed to use up to ten percent of the award amount for each allocation category under 42 U.S.C. 3796gg–1(c)(4) (law enforcement, prosecution, courts, victim services, and discretionary) to support the State's administrative costs. Amounts not used for administrative costs should be used to support subgrants.

§ 90.18 Matching funds

(a) In general. Subject to certain exclusions, States are required to provide a 25 percent non-Federal match. This does not apply to territories. This 25 percent match may be cash or in-kind services. States are expected to submit written documentation that identifies the source of the match. Funds awarded to victim service providers for victim services or to tribes are excluded from the total award amount for purposes of calculating match.

(b) In-kind match. In-kind match may include donations of expendable equipment; office supplies; workshop or education and training materials; work space; or the monetary value of time contributed by professional and technical personnel and other skilled and unskilled labor, if the services provided are an integral and necessary part of a funded project. Value for in-kind match is guided by 2 CFR 200.306. The value placed on loaned equipment may not exceed its fair rental value. The value placed on donated services must be consistent with the rate of compensation paid for similar work in the organization or the labor market. Fringe benefits may be included in the valuation. Volunteer services must be documented and, to the extent feasible, supported by the same valuation methods used by the recipient organization for its own employees. The value of donated space may not exceed the fair rental value of comparable space, as established by an independent appraisal of comparable space and facilities in a privately owned building in the same locality. The value for donated supplies shall be reasonable and not exceed the fair market value at the time of the donation. The basis for determining the value of personal services, materials, equipment, and space must be documented.

(c) Tribes and victim services providers. States may not require match to be provided in subgrants for Indian tribes or victim services providers.

(d) Waiver. States may petition the Office on Violence Against Women for a waiver of match if they are able to adequately demonstrate financial need.

(1) State match waiver. States may apply for full or partial waivers of match by submitting specific documentation of financial need. Documentation must include the following:

(i) The sources of non-Federal funds available to the State for match and the amount available from each source, including in-kind match and match provided by subgrantees or other entities;

(B) Efforts made by the State to obtain the matching funds, including, if applicable, letters from other State agencies stating that the funds available from such agencies may not be used for match;

(C) The specific dollar amount or percentage waiver that is requested;

(D) Cause and extent of the constraints on projected ability to raise violence against women program matching funds and changed circumstances that make past sources of match unavailable; and

(E) If applicable, specific evidence of economic distress, such as documentation of double-digit unemployment rates or designation as a Federal Emergency Management Agency-designated disaster area.

(F) In a request for a partial waiver of match for a particular allocation, the State could provide letters from the entities under that allocation attesting to their financial hardship.

(2) The State must demonstrate how the submitted documentation affects the State's ability to provide violence against women matching funds. For example, if a State shows that across the board budget cuts have directly reduced violence against women funding by 20 percent, that State would be considered for a 20 percent waiver, not a full waiver. Reductions in Federal funds are not relevant to State match unless the State can show that the reduced Federal funding directly reduced available State violence against women funds.

(e) Accountability. All funds designated as match are restricted to the same uses as the program funds as set forth in 42 U.S.C. 3796gg(b) and must be expended within the grant period. The State must ensure that match is identified in a manner that guarantees its accountability during an audit.

§ 90.19 Application content.

(a) Format. Applications from the States for the STOP Violence Against Women Formula Grant Program must be submitted as described in the annual solicitation. The Office on Violence Against Women will notify each State office as designated pursuant to section 90.11 when the annual solicitation is available. The solicitation will include guidance on how to prepare and submit an application for grants under this subpart.

(b) The application shall include all information required under 42 U.S.C. 3796gg–1(d).

§ 90.20 [Reserved]

§ 90.21 Evaluation.

(a) Recipients of funds under this subpart must agree to cooperate with Federally-sponsored evaluations of their projects.

(b) Recipients of STOP Violence Against Women Formula Grant Program funds are strongly encouraged to develop a local evaluation strategy to assess the impact and effectiveness of the program funded under the STOP program. Funds may not be used for conducting research or evaluations. Applicants should consider entering into partnerships with research organizations that are submitting simultaneous grant applications to the National Institute of Justice for this purpose.

§ 90.22 Review of State applications.

(a) The provisions of Part T of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796gg *et seq.*, and of these regulations provide the basis for review and approval or disapproval of State applications and amendments.

(b) Intergovernmental review. This program is covered by Executive Order 12372 (Intergovernmental Review of Federal Programs) and implementing regulations at 28 CFR part 30. A copy of the application submitted to the Office on Violence Against Women should also be submitted at the same time to the State's Single Point of Contact, if there is a Single Point of Contact.

§ 90.23 Annual grantee and subgrantee reporting.

Subgrantees shall complete annual progress reports and submit them to the State, which shall review them and submit them to the Office on Violence Against Women. In addition, the State shall complete an annual progress report, including an assessment of whether or not annual goals and objectives were achieved.

§ 90.24 Activities that may compromise victim safety and recovery.

Because of the overall purpose of the program to enhance victim safety and offender accountability, grant funds may not be used to support activities that compromise victim safety and recovery. The grant program solicitation each year will provide examples of such activities.

§ 90.25 Reallocation of funds.

As described in 42 U.S.C. 3796gg–1(j), States may reallocate funds returned to the State or if the State does not receive sufficient eligible applications to award the full funding under the allocations in

42 U.S.C. 3796gg–1(c)(4). An "eligible" application is one that is from an eligible entity that has the capacity to perform the proposed services, proposes activities within the scope of the program, and does not propose significant activities that compromise victim safety. States should have the following information on file to document the lack of sufficient eligible applications:

(1) A copy of their solicitation;

(2) Documentation on how the solicitation was distributed, including all outreach efforts to entities from the allocation in question;

(3) An explanation of their selection process;

(4) A list of who participated in the selection process (name, title, and employer);

(5) Number of applications that were received for the specific allocation category;

(6) Information about the applications received, such as who they were from, how much money they were requesting, and any reasons the applications were not funded;

(7) Letters from any relevant State-wide body explaining the lack of applications. For example, if the State is seeking to reallocate money from courts, they should have a letter from the State Court Administrator;

(8) For the culturally specific allocation, demographic statistics of the relevant racial and ethnic minority groups within the State and documentation that the State has reached out to relevant organizations within the State or national organizations.

Dated: April 20, 2016.

Bea Hanson,

Principal Deputy Director.

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 553

[Docket No. USA–2015–HQ–0046]

RIN 0702–AA60

Army National Military Cemeteries

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army (Army) proposes to amend its regulation for the development, operation, maintenance, and administration of the Army National Cemeteries to reflect their statutory name change to the Army National Military Cemeteries and changes in the management structure, to adopt modifications suggested by the Department of the Army Inspector General, and to implement changes in interment eligibility.

DATES: Consideration will be given to all comments received by July 11, 2016.

ADDRESSES: You may submit comments, identified by 32 CFR part 553, Docket No. USA–2015–HQ–0046 and or by Regulatory Information Number (RIN) 0720–AA60 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.
- *Instructions:* All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Quackenbush, Army National Military Cemeteries, 703–614–7150.

SUPPLEMENTARY INFORMATION: The revisions to this rule will be reported in future status updates as part of DoD's retrospective plan under Executive Order 13563 completed in August 2011. DoD's full plan can be accessed at: *http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036.*

A. Executive Summary

I. Purpose of the Regulatory Action

a. This regulatory action modifies the Army's regulation governing Army National Military Cemeteries, which consist of Arlington National Cemetery and the U.S. Soldiers' and Airmen's Home National Cemetery, to reflect changes in the management structure of the Army National Military Cemeteries created by Army General Orders 2014–74 and 2014–75 and the National Defense Authorization Act for Fiscal Year 2012, Pub. L. 112–81, section 591 (2011) (adding chapter 446 to title 10); to adopt modifications suggested by the Department of the Army Inspector General; to implement interment, inurnment, and memorialization eligibility restrictions, including those mandated by 10 U.S.C. 985 and 38 U.S.C. 2411; and to prohibit the reservation of gravesites as mandated by 38 U.S.C. 2410a.

b. The legal authority for this regulatory action is section 591 of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81 (2011), which added chapter 446 to title 10. Chapter 446 requires the Secretary of the Army to prescribe regulations and policies as may be necessary to administer the Army National Military Cemeteries, and it codifies the role of the Executive Director as the individual responsible for exercising authority, direction, and control over all aspects of the Army National Military Cemeteries. Throughout part 553, the Army replaces references to the Superintendent of the Cemetery, the Adjutant General, and Commanding General, Military District of Washington, with "Executive Director" to reflect the current command structure, which was implemented through Army General Orders 2014–74 and 2014–75 and codified in the National Defense Authorization Act of 2012.

II. Summary of the Major Provisions of the Regulatory Action in Question

The new definition of *Army National Military Cemeteries* reflects the Army National Military Cemeteries' status as a Secretariat element of Headquarters, Department of the Army. Prior to the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, sec. 591 (2011), the Army National Cemeteries were a civil works activity of the Department of the Army. Throughout part 553, the term *Army National Military Cemeteries* replaces "Army National Cemeteries" to reflect this statutory change.

Section 553.3 (redesignated as § 553.4), "Scope and applicability," is amended to focus on the applicability of this part and not on the applicability of a separate internal Army regulation.

Section 553.4, "Responsibilities," is removed, and its content is included in proposed § 553.3, "Statutory authorities."

Section 553.5, "Federal Jurisdiction," is removed as 10 U.S.C. chapter 446 provides that the Army National Military Cemeteries shall be under the jurisdiction of Headquarters, Department of the Army.

Section 553.6, "Donations," is removed because its subject matter is addressed fully in other statutes and regulations.

Section 553.7, "Design and layout of Army National Cemeteries," is renamed

"Standards for managing Army National Military Cemeteries" (redesignated as § 553.6).

Section 553.8 (redesignated as § 553.7), "Arlington Memorial Amphitheater," makes it easier for the public to understand how the Arlington Memorial Amphitheater is managed.

Section 553.9, "Power of Arrest," which addressed the Superintendent's power of arrest in limited circumstances, is removed. This provision is no longer expressly authorized by statute and is not necessary because police and security have been provided for at the Army National Military Cemeteries. However, in proposed § 553.5, the Executive Director is provided the authority to order the removal of and bar from re-entry any person who violates any number of designated statutes or regulations.

Section 553.10, "Solicitations," is now addressed in proposed § 553.34, "Soliciting and vending."

Section 553.11, "Procurement," is removed because the information it contains is covered by other laws and regulations and is thus unnecessary.

Section 553.12, "Encroachments and revocable licenses," is renamed "Permission to install utilities" (redesignated as § 553.8) and no longer considers encroachments, which are no longer applicable.

Section 553.13 "Standards of construction, maintenance, and operations," is renamed "Standards for managing Army National Military Cemeteries" (redesignated as § 553.6) and is proposed to reflect the role of the Executive Director as the individual responsible for exercising authority, direction, and control over all aspects of the Army National Military Cemeteries, as codified in chapter 446 of title 10.

Section 553.14 "Authority for interments," is renamed "Statutory authorities" (redesignated as § 553.3) and includes all authorities related to the Army National Military Cemeteries, not just the authority for interments.

Section 553.15 "Persons eligible for burial in Arlington National Cemetery" is renamed "Eligibility for interment in Arlington National Cemetery" (redesignated as § 553.12) and reflects the difference between primary and derivative eligibility, clarifies which elective offices can create eligibility for interment, allows subsequently remarried spouses to be eligible for interment with the prior spouse under certain circumstances, and gives derivative eligibility to certain otherwise ineligible veterans whose close relatives are primarily eligible.

Section 553.15a, "Persons eligible for inurnment of cremated remains in Columbarium in Arlington National Cemetery," is renamed "Eligibility for inurnment in Arlington National Cemetery Columbarium" (redesignated as § 553.13).

Section 553.16 "Persons eligible for burial in Soldiers' Home National Cemetery," is renamed "Eligibility for burial in U.S. Soldiers' and Airmen's Home National Cemetery" (redesignated as § 553.18) and clarifies that eligibility is limited to the residents of the Armed Forces Retirement Home.

Section 553.17, "Persons ineligible for burial in an Army national cemetery," is renamed "Ineligibility for interment, inurnment or memorialization in an Army National Military Cemetery" (redesignated as § 553.19) and expands upon § 553.17 so that inurnments and memorializations will also be covered under this section. Proposed § 553.19 clarifies the ineligibility of a former spouse whose marriage to the primarily eligible person ended in divorce, clarifies the termination of a spouse's derivative eligibility upon interment in a cemetery other than an Army National Military Cemetery and the remarriage of the primarily eligible spouse, forbids the interment or inurnment of persons convicted of certain crimes, forbids the interment or inurnment of persons who died on active duty under certain circumstances, and governs how animal remains unintentionally comingled with human remains shall be treated.

Section 553.18, "Assignment of gravesites," is renamed "Assignment of gravesites or niches" (redesignated as § 553.9) so the assignment of niches will also be covered under this section. Proposed § 553.9 would also implement 38 U.S.C. 2410a, which prohibits the reservation of a gravesite at Arlington National Cemetery prior an individual's death, absent a waiver from the President of the United States, and imposes the limit of one gravesite per family. Proposed § 553.9 explains the one-gravesite-per-family policy, explains how previously made reservations will be treated, and gives the Executive Director the authority to cancel reservations under certain circumstances.

Section 553.19, "Disinterments," is renamed "Disinterments and disurnments of remains" (redesignated as § 553.25) so the disurnment of remains will also be covered under this section. Proposed § 553.25 explains the disinterment and disurnment process and governs disinterment from group burial sites.

Section 553.20, "Headstones and markers," is renamed "Design of Government-furnished headstones, niche covers, and memorial markers" (proposed § 553.26) and includes niche covers, removes a repealed citation, and notifies the public that the Executive Director shall approve the design of headstones and memorial markers erected for group burials.

Section 553.21, "Monuments and inscriptions at private expense," is renamed "Private headstones and markers" (redesignated as § 553.28) and makes clear that the design and inscription of a private headstone or marker must be approved by the Executive Director prior to its construction and placement. Proposed § 553.28 more fully explains the treatment of private headstones at Army National Military Cemeteries.

Section 553.22, "Visitors' Rules for the Arlington National Cemetery," is renamed "Visitors rules for Army National Military Cemeteries" (redesignated as § 553.33) and simplifies the regulation and prohibits dogs, cats, or other animals (except for service animals or military working dogs) from an Army National Military Cemetery.

Proposed § 553.1, "Definitions," provides the definitions of terms used throughout the proposed rule.

Proposed § 553.2, "Purpose," explains that this part specifies the authorities and assigns the responsibilities for the development, operation, maintenance, and administration of the Army National Military Cemeteries.

Proposed § 553.5, "Maintaining order," notifies the public of the Executive Director's authority to order the removal from and bar the re-entry onto the Army National Military Cemeteries of any person who acts in violation of any regulation, including this part, covered by 50 U.S.C. 797.

Proposed § 553.10, "Proof of eligibility," provides a list of the official documents used to establish a decedent's eligibility for interment or inurnment in the Army National Military Cemeteries, including the requirement of certification that 100% of the cremated remains will be interred or inurned in the Army National Military Cemeteries, with an exception for producing commemorative items if authorized by the Executive Director.

Proposed § 553.11, "General rules governing eligibility for interment, inurnment, and memorialization at Arlington National Cemetery," clarifies the eligibility guidelines, in particular the distinction between a person who is primarily eligible and a person who is derivatively eligible for interment or inurnment.

Proposed § 553.14, "Eligibility for interment of cremated remains in the

Arlington National Cemetery Unmarked Area," implements 38 U.S.C § 2410, which authorizes the Secretary of the Army to set aside land at Arlington National Cemetery for the interment under such rules as the Secretary may prescribe, of unmarked cremated remains of persons eligible for interment at Arlington National Cemetery.

Proposed § 553.15, "Eligibility for group burial at Arlington National Cemetery," regulates the interment of unidentifiable co-mingled human remains of which at least one person is eligible for interment at Arlington National Cemetery.

Proposed § 553.16, "Eligibility for memorialization in an Arlington National Cemetery Memorial Area," supplements § 553.21(b), "Monuments and inscriptions at private expense," and explains to the public how Arlington National Cemetery will treat memorial markers.

Proposed § 553.17, "Arlington National Cemetery internment/inurnment agreement," guarantees that when a derivatively eligible person predeceases a primarily eligible person and is interred or inurned at Arlington National Cemetery, the primarily eligible person will eventually be buried in the same gravesite or inurned in the same niche.

Proposed § 553.20, "Prohibition of interment, inurnment, or memorialization in an Army National Military Cemetery of persons who have committed certain crimes," implements 10 U.S.C. 985 and 38 U.S.C. 2411, which prohibit the interment, inurnment, or memorialization in any Army National Military Cemetery of an individual who has been convicted of a federal or state capital crime, who committed a federal or state capital crime but was not convicted of such crime because the person was not available for trial due to death or flight to avoid prosecution, or who has been convicted of a Federal or State crime causing the person to be a Tier III sex offender for purposes of the Sex Offender Registration and Notification Act and who is sentenced to a minimum of life imprisonment. Definitions of the terms *federal capital crime* and *state capital crime* have been included in proposed § 553.1 to implement these regulations.

Proposed § 553.21, "Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution," implements 10 U.S.C. 985 and 38 U.S.C. 241, which prohibit the interment, inurnment, or memorialization in any Army National Military Cemetery of an individual who has been convicted of a federal or state capital crime, or who committed a federal or state capital crime but was not convicted of such crime because the person was not available for trial due to death or flight to avoid prosecution.

Proposed § 553.22, "Exceptions to policies for interment or inurnment at Arlington National Cemetery" implements 10 U.S.C. 4722, which authorizes the Secretary of the Army to establish policies and procedures for reviewing and determining requests for exception to the interment and inurnment eligibility policies. Proposed § 553.22 notifies the public as to how exceptions will be processed.

Proposed § 553.23, "Placement of cremated remains at Army National Military Cemeteries," clarifies the requirement that all cremated remains shall be interred or inurned and that the burial of symbolic containers is prohibited in the Army National Military Cemeteries.

Proposed § 553.24, "Subsequently recovered remains," provides that the subsequently recovered identified remains of a decedent shall be reunited in one gravesite or urn or as part of a group interment either in an Army National Military Cemetery or other cemetery.

Proposed § 553.29, "Permission to construct private headstones and markers," explains how a headstone firm may obtain permission to construct private headstones and markers at Army National Military Cemeteries.

Proposed § 553.30, "Inscriptions on private headstones and markers," provides guidelines for inscriptions on private headstones and markers.

Proposed § 553.31, "Memorial and commemorative monuments (other than private headstones or markers)," governs the placement of memorials or commemorative monuments in Arlington National Cemetery in accordance with 38 U.S.C. 2409(b).

Proposed § 553.32, "Conduct of memorial services and ceremonies," explains the manner in which the Army National Military Cemeteries ensures the sanctity of public and private memorial and ceremonial events.

Proposed § 553.35, "Media," provides that all officials and staff of the media are subject to the visitors rules and shall comply with the Department of the Army's media policy.

B. Regulatory Flexibility Act

The Army has determined that the Regulatory Flexibility Act does not apply because the rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Unfunded Mandates Reform Act

The Army has determined that the Unfunded Mandates Reform Act does not apply because the rule does not include a mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or the private sector, of $100 million or more.

D. National Environmental Policy Act

Neither an environmental analysis nor an environmental impact statement under the National Environmental Policy Act is required. The changes made to the prior regulation by this amendment reflect existing policies and do not significantly alter ongoing activities, nor does this amendment constitute a new use of the property.

E. Paperwork Reduction Act

The Army has determined that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Army has determined that E.O. 12630 does not apply because the rule does not impair private property rights.

G. Executive Order 12866 (Regulatory Planning and Review) and E.O. 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget." (OMB).

H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Army has determined that according to the criteria defined in E.O. 13045, the requirements of that Order do not apply to this rule.

I. Executive Order 13132 (Federalism)

The Army has determined that, according to the criteria defined in E.O. 13132, the requirements of that Order do not apply to this rule because the rule will not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

Patrick K. Hallinan,
Executive Director.

List of Subjects in 32 CFR Part 553

Armed forces, Armed forces reserves, Military personnel, Monuments and memorials, Veterans.

For the reasons stated in the preamble, the Department of the Army proposes to revise part 553 to read as follows:

PART 553—ARMY NATIONAL MILITARY CEMETERIES

Sec.

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553.22 Exceptions to policies for interment or inurnment at Arlington National Cemetery.
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553.26 Design of Government-furnished headstones, niche covers, and memorial markers.
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553.28 Private headstones and markers.
553.29 Permission to construct private headstones and markers.
553.30 Inscriptions on private headstones and markers.
553.31 Memorial and commemorative monuments (other than private headstones or markers).
553.32 Conduct of memorial services and ceremonies.
553.33 Visitors rules for Army National Military Cemeteries.
553.34 Soliciting and vending.
553.35 Media.

Authority: 10 U.S.C. 985, 1128, 1481, 1482, 3013, 4721–4726; 24 U.S.C. 295a, 412; 38 U.S.C. 2402 note, 2409–2411, 2413; 40 U.S.C. 9102.

§ 553.1 Definitions.

As used in this part, the following terms have these meanings:

Active duty. Full-time duty in the active military service of the United States.

(1) This includes:

(i) Active Reserve component duty performed pursuant to title 10, United States Code.

(ii) Service as a cadet or midshipman currently on the rolls at the U.S. Military, U.S. Naval, U.S. Air Force, or U.S. Coast Guard Academies.

(iii) Active duty for operational support.

(2) This does not include:

(i) Full-time duty performed under title 32, United States Code.

(ii) Active duty for training, initial entry training, annual training duty, or inactive-duty training for members of the Reserve components.

Active duty for operational support (formerly active duty for special work). A tour of active duty for Reserve personnel authorized from military or Reserve personnel appropriations for work on Active component or Reserve component programs. The purpose of active duty for operational support is to provide the necessary skilled manpower assets to support existing or emerging requirements and may include training.

Active duty for training. A category of active duty used to provide structured individual and/or unit training, including on-the-job training, or educational courses to Reserve component members. Included in the active duty for training category are annual training, initial active duty for training, or any other training duty.

Annual training. The minimum period of active duty for training that Reserve members must perform each year to satisfy the training requirements associated with their Reserve component assignment.

Armed Forces. The U.S. Army, Navy, Marine Corps, Coast Guard, Air Force and their Reserve components.

Army National Military Cemeteries. Arlington National Cemetery and the U.S. Soldiers' and Airmen's Home National Cemetery.

Category 4, 5, or 5+ Posts. Category 4, 5, or 5+ posts, including the equivalent classifications as determined by the Department of State that were used prior to 2004 or may be used subsequently.

Child, minor child, permanently dependent child, unmarried adult child.

(1) *Child.*

(i) Natural child of a primarily eligible person, born in wedlock;

(ii) Natural child of a female primarily eligible person, born out of wedlock;

(iii) Natural child of a male primarily eligible person, who was born out of wedlock and:

(A) Has been acknowledged in a writing signed by the male primarily eligible person;

(B) Has been judicially determined to be the male primarily eligible person's child;

(C) Whom the male primarily eligible person has been judicially ordered to support; or

(D) Has been otherwise proved, by evidence satisfactory to the Executive Director, to be the child of the male primarily eligible person

(iv) Adopted child of a primarily eligible person; or

(v) Stepchild who was part of the primarily eligible person's household at the time of death of the individual who is to be interred or inurned.

(2) *Minor child.* A child of the primarily eligible person who

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is under the age of twenty-one years, or is under the age of twenty-three years and is taking a full-time course of instruction at an educational institution which the U.S. Department of Education acknowledges as an accredited educational institution.

(3) *Permanently dependent child.* A child of the primarily eligible person who

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is permanently and fully dependent on one or both of the child's parents because of a physical or mental disability incurred before attaining the age of twenty-one years or before the age of twenty-three years while taking a full-time course of instruction at an educational institution which the U.S. Department of Education acknowledges as an accredited educational institution.

(4) *Unmarried adult child.* A child of the primarily eligible person who

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Has attained the age of twenty-one years.

Close relative. The spouse, parents, adult brothers and sisters, adult natural children, adult stepchildren, and adult adopted children of a decedent.

Commemorative monuments. Monuments or other structures or landscape features that serve to honor events in history, units of the Armed Forces, individuals, or groups of individuals that served in the Armed Forces, and that do not contain human remains or mark the location of remains in close proximity. The term does not include memorial markers erected pursuant to § 553.16 of this part.

Derivatively eligible person. Any person who is entitled to interment or inurnment solely based on his or her relationship to a primarily eligible person, as set forth in §§ 553.12(b) and § 553.13(b) respectively.

Disinterment. The permanent removal of interred human remains from a particular gravesite.

Disinurnment. The permanent removal of remains from a particular niche.

Executive Director. The person statutorily charged with exercising authority, direction, and control over all aspects of Army National Military Cemeteries.

Federal capital crime. An offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.

Former prisoner of war. A person who is eligible for or has been awarded the Prisoner of War Medal.

Former spouse. See *spouse.*

Government. The U.S. government and its agencies and instrumentalities.

Group burial. Interment in one gravesite of one or more service members on active duty killed in the same incident or location where:

(i) The remains cannot be individually identified; or

(ii) The person authorized to direct disposition of subsequently identified remains has authorized their interment with the other service members. Group remains may contain incidental remains of civilians and foreign nationals.

Inactive-duty training.

(i) Duty prescribed for members of the Reserve components by the Secretary concerned under 37 U.S.C. 206 or any other provision of law.

(ii) Special additional duties authorized for members of the Reserve components by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

(iii) In the case of a member of the Army National Guard or Air National Guard of any State, duty (other than full-time duty) under 32 U.S.C. 316, 502, 503, 504 or 505 or the prior corresponding provisions of law.

(iv) This term does not include:

(A) Work or study performed in connection with correspondence courses,

(B) Attendance at an educational institution in an inactive status, or

(C) Duty performed as a temporary member of the Coast Guard Reserve.

Interment. The ground burial of casketed or cremated human remains.

Inurnment. The placement of cremated human remains in a niche.

Media. Individuals and agencies that print, broadcast, or gather and transmit news, and their reporters, photographers, and employees.

Memorial marker. A headstone used to memorialize a service member or veteran whose remains are unavailable for reasons listed in § 553.16 of this part.

Memorial service or ceremony. Any activity intended to honor the memory of a person or persons interred, inurned, or memorialized in the Army National Military Cemeteries. This term includes private memorial services, public memorial services, public wreath laying ceremonies, and official ceremonies.

Minor child. See *child.*

Niche. An aboveground space constructed specifically for the placement of cremated human remains.

Official ceremony. A memorial service or ceremony approved by the Executive Director in which the primary participants are representatives of the Government, a State government, a foreign government, or an international organization authorized by the U.S. Department of State to participate in an official capacity.

Parent. A natural parent, a stepparent, a parent by adoption, or a person who for a period of not less than one year stood *in loco parentis,* or was granted legal custody by a court decree or statutory provision.

Permanently dependent child. See *child.*

Person authorized to direct disposition. The person primarily entitled to direct disposition of human remains and who elects to exercise that entitlement. Determination of such entitlement shall be made in accordance with applicable law and regulations.

Personal representative. A person who has legal authority to act on behalf of another through applicable law, order, and regulation.

Primarily eligible person. Any person who is entitled to interment or inurnment based on his or her service as specified in § 553.12(a) and § 553.13(a) respectively.

Primary next of kin. In the absence of a valid written document from the decedent identifying the primary next of kin, the order of precedence for designating a decedent's primary next of kin is as follows:

(1) Spouse, even if a minor;

(2) Children;

(3) Parents;

(4) Siblings, to include half-blood and those acquired through adoption;

(5) Grandparents;

(6) Other next of kin, in order of relationship to the decedent as determined by the laws of the decedent's state of domicile.

Absent a court order or written document from the deceased, the precedence of next of kin with equal relationships to the decedent is governed by seniority (age), older having higher priority than younger. Equal relationship situations include those involving divorced parents of the decedent, children of the decedent, and siblings of the decedent.

Private headstones or markers. A headstone or individual memorial marker provided at private expense, in lieu of a headstone or individual memorial marker furnished by the Government.

Private memorial service. A memorial service or ceremony conducted at the decedent's gravesite, memorial headstone, or niche.

Public memorial service. A ceremony conducted by members of the public at a historic site in an Army National Military Cemetery.

Public wreath-laying ceremony. A ceremony in which members of the public, assisted by the Tomb Guards, present a wreath or similar memento at the Tomb of the Unknown Soldier.

Reserve component. The Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the Army National Guard of the United States, and the Air National Guard of the United States.

Spouse, former spouse, subsequently remarried spouse.

(1) *Spouse.* A person who is legally married to another person.

(2) *Former spouse.* A person who was legally married to another person at one

time but was not legally married to that person at the time of one of their deaths.

(3) *Subsequently remarried spouse.* A derivatively eligible spouse who was married to the primarily eligible person at the time of the primarily eligible person's death and who subsequently remarried another person.

State capital crime. Under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of imprisonment for life or the death penalty may be imposed.

Subsequently recovered remains. Additional remains belonging to the decedent that are recovered or identified after the decedent's interment or inurnment.

Subsequently remarried spouse. See *spouse.*

Unmarried adult child. See *child.*

Veteran. A person who served in the U.S. Armed Forces and who was discharged or released under honorable conditions.

§ 553.2 Purpose.

This part specifies the authorities and assigns the responsibilities for the development, operation, maintenance, and administration of the Army National Military Cemeteries.

§ 553.3 Statutory authorities.

(a) *Historical.* Act of July 17, 1862, Sec. 18, 12 Stat. 594, 596; Act of February 22, 1867, Ch. 61, 14 Stat. 399; and the National Cemeteries Act of 1973, Public Law 93–43, 87 Stat. 75 (1973). The National Cemeteries Act established the National Cemetery System, which primarily consists of national cemeteries transferred from the management authority of the Department of the Army to the (now) Department of Veterans Affairs. Section 6(a) of the Act exempted Arlington National Cemetery and the Soldiers' and Airmen's Home National Cemetery from transfer to the National Cemetery System, leaving them under the management authority of the Secretary of the Army.

(b) *Current.* Pursuant to 10 U.S.C. 4721(a), the Secretary of the Army shall develop, operate, manage, oversee, and fund the Army National Military Cemeteries. Section 4721(c) provides that the Army National Military Cemeteries are under the jurisdiction of Headquarters, Department of the Army, and 10 U.S.C. 4721(d) provides that the Secretary of the Army shall prescribe such regulations and policies as may be necessary to administer the Army National Military Cemeteries. The responsibilities of Headquarters, Department of the Army with regard to the Army National Military Cemeteries are enumerated in 10 U.S.C. 4721–4726 and Army General Orders 2014–74 and 2014–75.

§ 553.4 Scope and applicability.

(a) *Scope.* The development, maintenance, administration, and operation of the Army National Military Cemeteries are governed by this part, Army Regulation 290–5, and Department of the Army Pamphlet 290–5. The development, maintenance, administration, and operation of Army post cemeteries are not covered by this part.

(b) *Applicability.* This part is applicable to all persons on, engaging in business with, or seeking access to or benefits from the Army National Military Cemeteries, unless otherwise specified.

§ 553.5 Maintaining order.

The Executive Director may order the removal from, and bar the re-entry onto, Army National Military Cemeteries of any person who acts in violation of any law or regulation, including but not limited to demonstrations and disturbances as outlined in 38 U.S.C. 2413, and in this part. This authority may not be re-delegated.

§ 553.6 Standards for managing Army National Military Cemeteries.

(a) The Executive Director is responsible for establishing and maintaining cemetery layout plans, including plans setting forth sections with gravesites, memorial areas with markers, and columbaria with niches, and landscape planting plans.

(b) New sections or areas may be opened and prepared for interments or for installing memorial markers only with the approval of the Executive Director.

§ 553.7 Arlington Memorial Amphitheater.

(a) In accordance with 24 U.S.C. 295a:

(1) No memorial may be erected and no remains may be entombed in the Arlington Memorial Amphitheater unless specifically authorized by Congress; and

(2) The character, design, or location of any memorial authorized by Congress for placement in the Amphitheater is subject to the approval of the Secretary of Defense or his or her designee.

(b) The Secretary of Defense or his or her designee will seek the advice of the Commission of Fine Arts in such matters, in accordance with 40 U.S.C. 9102.

(c) Tributes offered for those interred in the Tomb of the Unknown Soldier for placement in the Arlington Memorial Amphitheater display room are not memorials for purposes of this section.

§ 553.8 Permission to install utilities.

(a) The installation of utilities in Army National Military Cemeteries, including but not limited to, telephone and fiber optic lines, electric lines, natural gas lines, water pipes, storm drains, and sanitary sewers, must be authorized by the Executive Director.

(b) Requests for licenses, permits, or easements to install water, gas, or sewer lines, or other utilities or equipment on or across an Army National Military Cemetery or an approach road in which the Government has a right-of-way, fee simple title, or other interest, must be sent to the Executive Director, who will process the request in accordance with Army policy. Requests must include a complete description of the type of license, permit, or easement desired and a map showing the location of the project.

§ 553.9 Assignment of gravesites or niches.

(a) All eligible persons will be assigned gravesites or niches without discrimination as to race, color, sex, religion, age, or national origin and without preference to military grade or rank.

(b) The Army National Military Cemeteries will enforce a one-gravesite-per-family policy. Once the initial interment or inurnment is made in a gravesite or niche, each additional interment or inurnment of eligible persons must be made in the same gravesite or niche, except as noted in paragraph (f) of this section. This includes multiple primarily eligible persons if they are married to each other.

(c) In accordance with 38 U.S.C. 2410A(a)(2) the Secretary of the Army may waive the prohibition in paragraph (b) of this section as the Secretary of the Army deems appropriate.

(d) A gravesite reservation will be honored if it meets the following requirements, unless it is cancelled by the Executive Director:

(1) The gravesite was properly reserved by law before January 1, 1962, and

(2) An eligible person was interred in the reserved gravesite prior to January 1, 2017.

(e) The Executive Director may cancel a gravesite reservation:

(1) Upon determination that a derivatively eligible spouse has remarried;

(2) Upon determination that the reservee's remains have been buried elsewhere or otherwise disposed of;

(3) Upon determination that the reservee desires to or will be interred in the same gravesite with the predeceased, and doing so is feasible; or

(4) Upon determination that the reservee would be 120 years of age and there is no record of correspondence with the reservee within the last two decades.

(f) In cases of reservations meeting the requirements of 38 U.S.C 2410A note, where more than one gravesite was reserved (on the basis of the veteran's eligibility at the time the reservation was made) and no interment has yet been made in any of the sites, the one-gravesite-per-family policy will be enforced, unless waived by the Executive Director. Gravesite reservations will be honored only if the decedents meet the eligibility criteria for interment in Arlington National Cemetery that is in effect at the time of need, and the reserved gravesite is available.

(g) Where a primarily eligible person has been or will be interred as part of a group burial or has been or will be memorialized in a memorial area at Arlington National Cemetery, the Executive Director will assign a gravesite or niche for interment or inurnment of a derivatively eligible person.

(h) Gravesites or niches shall not be reserved or assigned prior to the time of need.

(i) The selection of gravesites and niches is the responsibility of the Executive Director. The selection of specific gravesites or niches by the family or other representatives of the deceased at any time is prohibited.

§ 553.10 Proof of eligibility.

(a) The personal representative or primary next of kin is responsible for providing appropriate documentation to verify the decedent's eligibility for interment or inurnment.

(b) The personal representative or primary next of kin must certify in writing that the decedent is not prohibited from interment, inurnment, or memorialization under § 553.20 of this part because he or she has committed or been convicted of a Federal or State capital crime or is a convicted Tier III sex offender as defined in 38 U.S.C § 2411.

(c) For service members who die on active duty, a statement of honorable service from a general court martial convening authority is required. If the certificate of honorable service cannot be granted, the service member is ineligible for interment, inurnment, and memorialization pursuant to § 553.19(i) of this part.

(d) When applicable, the following documents are required:

(1) Death certificate;

(2) Proof of eligibility as required by subsections (e) through (g) of this section;

(3) Any additional documentation to establish the decedent's eligibility (*e.g.*, marriage certificate, birth certificate, waivers, statements that the decedent had no children);

(4) Burial agreement;

(5) Notarized statement that the remains are unavailable for the reasons set forth in § 553.16 of this part; and

(6) A certificate of cremation or notarized statement attesting to the authenticity of the cremated human remains and that 100% of the cremated remains received from the crematorium are present. The Executive Director may, however, allow a portion of the cremated remains to be removed by the crematorium for the sole purpose of producing commemorative items.

(7) Any other document as required by the Executive Director.

(e) The following documents may be used to establish the eligibility of a primarily eligible person:

(1) DD Form 214, Certificate of Release or Discharge from Active Duty;

(2) WD AGO 53 or 53–55, Enlisted Record and Report of Separation Honorable Discharge;

(3) WD AGO 53–98, Military Record and Report of Separation Certificate of Service;

(4) NAVPERS–553, Notice of Separation from U.S. Naval Service;

(5) NAVMC 70–PD, Honorable Discharge, U.S. Marine Corps; or;

(6) DD Form 1300, Report of Casualty (required in the case of death of an active duty service member).

(f) In addition to the documents otherwise required by this section, a request for interment or inurnment of a subsequently remarried spouse must be accompanied by:

(1) A notarized statement from the new spouse of the subsequently remarried spouse agreeing to the interment or inurnment and relinquishing any claim for interment or inurnment in the same gravesite or niche.

(2) Notarized statement(s) from all of the children from the prior marriage agreeing to the interment or inurnment of their parents in the same gravesite or niche.

(g) In addition to the documents otherwise required by this section, a request for interment or inurnment of a permanently dependent child must be accompanied by:

(1) A notarized statement as to the marital status and degree of dependency of the decedent from an individual with direct knowledge; and

(2) A physician's statement regarding the nature and duration of the physical or mental disability; and

(3) A statement from someone with direct knowledge demonstrating the following factors:

(i) The deceased lived most of his or her adult life with one or both parents, one or both of whom are otherwise eligible for interment;

(ii) The decedent's children, siblings, or other family members, other than the eligible parent, waive any derivative claim to be interred at Arlington National Cemetery, in accordance with the Arlington National Cemetery Burial Agreement.

(h) Veterans or primary next of kin of deceased veterans may obtain copies of their military records by writing to the National Personnel Records Center, Attention: Military Personnel Records, 9700 Page Avenue, St. Louis, Missouri 63132 or using their Web site. All others may request a record by completing and submitting Standard Form 180.

(i) The burden of proving eligibility lies with the party who requests the burial. The Executive Director will determine whether the submitted evidence is sufficient to support a finding of eligibility.

§ 553.11 General rules governing eligibility for interment, inurnment, and memorialization at Arlington National Cemetery.

(a) Only those persons who meet the criteria of § 553.12 of this part or are granted an exception to policy pursuant to § 553.22 of this part may be interred in Arlington National Cemetery. Only those persons who meet the criteria of § 553.13 of this part or are granted an exception to policy pursuant to § 553.22 of this part may be inurned in Arlington National Cemetery. Only those persons who meet the criteria of § 553.14 may be interred in the Arlington National Cemetery Unmarked Area. Only those persons who meet the criteria of § 553.15 may be interred in an Arlington National Cemetery group burial. Only those persons who meet the criteria of § 553.16 may be memorialized in Arlington National Cemetery.

(b) Derivative eligibility for interment or inurnment may be established only through a decedent's connection to a primarily eligible person and not to another derivatively eligible person.

(c) No veteran is eligible for interment, inurnment, or memorialization in Arlington National Cemetery unless the veteran's last period of active duty ended with an honorable discharge. A general discharge under honorable conditions is not sufficient for interment, inurnment or memorialization in Arlington National Cemetery.

(d) For purposes of determining whether a service member has received an honorable discharge, final determinations regarding discharges made in accordance with procedures established by chapter 79 of title 10, United States Code, will be considered authoritative.

(e) The Secretary of the Army has the authority to act on requests for exceptions to the provisions of the interment, inurnment, and memorialization eligibility policies contained in this part. The Secretary of the Army may delegate this authority to the Executive Director on such terms deemed appropriate.

(f) Individuals who do not qualify as a primarily eligible person or a derivatively eligible person, but who are granted an exception to policy to be interred or inurned pursuant to § 553.22 of this part in a new gravesite or niche, will be treated as a primarily eligible person for purposes of this part.

(g) Notwithstanding any other section in this part, memorialization with an individual memorial marker, interment, or inurnment in the Army National Military Cemeteries is prohibited if there is a gravesite, niche, or individual memorial marker for the decedent in any other Government-operated cemetery or the Government has provided an individual grave marker, individual memorial marker or niche cover for placement in a private cemetery.

§ 553.12 Eligibility for interment in Arlington National Cemetery.

Only those who qualify as a primarily eligible person or a derivatively eligible person are eligible for interment in Arlington National Cemetery, unless otherwise prohibited as provided for in §§ 553.19–20 of this part, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) *Primarily eligible persons.* The following are primarily eligible persons for purposes of interment:

(1) Any service member who dies on active duty in the U.S. Armed Forces (except those service members serving on active duty for training only), if the General Courts Martial Convening Authority grants a certificate of honorable service.

(2) Any veteran retired from a Reserve component who served a period of active duty (other than for training), is carried on the official retired list, and is entitled to receive military retired pay.

(3) Any veteran retired from active military service and entitled to receive military retired pay.

(4) Any veteran who received an honorable discharge from the Armed Forces prior to October 1, 1949, who was discharged for a permanent physical disability, who served on active duty (other than for training), and who would have been eligible for retirement under the provisions of 10 U.S.C. 1201 had the statute been in effect on the date of separation.

(5) Any veteran awarded one of the following decorations:

(i) Medal of Honor;

(ii) Distinguished Service Cross, Air Force Cross, or Navy Cross;

(iii) Distinguished Service Medal;

(iv) Silver Star; or

(v) Purple Heart.

(6) Any veteran who served on active duty (other than active duty for training) and who held any of the following positions:

(i) President or Vice President of the United States;

(ii) Elected member of the U.S. Congress;

(iii) Chief Justice of the Supreme Court of the United States or Associate Justice of the Supreme Court of the United States;

(iv) A position listed, at the time the person held the position, in 5 U.S.C. 5312 or 5313 (Levels I and II of the Executive Schedule); or

(v) Chief of Mission of a Category 4, 5, or 5+ post if the Department of State classified that post as a Category 4, 5, or 5+ post during the person's tenure as Chief of Mission.

(7) Any former prisoner of war who, while a prisoner of war, served honorably in the active military service, and who died on or after November 30, 1993.

(b) *Derivatively eligible persons.* The following individuals are derivatively eligible persons for purposes of interment who may be interred if space is available in the gravesite of the primarily eligible person:

(1) The spouse of a primarily eligible person who is or will be interred in Arlington National Cemetery. A former spouse of a primarily eligible person is not eligible for interment in Arlington National Cemetery under this paragraph.

(2) The spouse of an active duty service member or an eligible veteran, who was:

(i) Lost or buried at sea, temporarily interred overseas due to action by the Government, or officially determined to be missing in action;

(ii) Buried in a U.S. military cemetery maintained by the American Battle Monuments Commission; or

(iii) Interred in Arlington National Cemetery as part of a group burial (the derivatively eligible spouse may not be buried in the group burial gravesite).

(3) The parents of a minor child or a permanently dependent adult child, whose remains were interred in Arlington National Cemetery based on the eligibility of a parent at the time of the child's death, unless eligibility of the non-service connected parent is lost through divorce from the primarily eligible parent.

(4) An honorably discharged veteran who does not qualify as a primarily eligible person, if the veteran will be buried in the same gravesite as an already interred primarily eligible person who is a close relative, where the interment meets the following conditions:

(i) The veteran is without minor or unmarried adult dependent children;

(ii) The veteran will not occupy space reserved for the spouse, a minor child, or a permanently dependent adult child;

(iii) All other close relatives of the primarily eligible person concur with the interment of the veteran with the primarily eligible person by signing a notarized statement;

(iv) The veteran's spouse waives any entitlement to interment in Arlington National Cemetery, where such entitlement might be based on the veteran's interment in Arlington National Cemetery. The Executive Director may set aside the spouse's waiver, provided space is available in the same gravesite, and all close relatives of the primarily eligible person concur;

(v) Any cost of moving, recasketing, or revaulting the remains will be paid from private funds; and

§ 553.13 Eligibility for inurnment in Arlington National Cemetery Columbarium.

The following persons are eligible for inurnment in the Arlington National Cemetery Columbarium, unless otherwise prohibited as provided for in §§ 553.19–20, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) *Primarily eligible persons.* The following are primarily eligible persons for purposes of inurnment:

(1) Any person eligible for interment in Arlington National Cemetery, as provided for in § 553.12(a).

(2) Any veteran who served on active duty other than active duty for training.

(3) Any member of a Reserve component of the Armed Forces who dies while:

(i) On active duty for training or performing full-time duty under title 32, United States Code;

(ii) Performing authorized travel to or from such active duty for training or full-time duty;

(iii) On authorized inactive-duty training, including training performed as a member of the Army National Guard of the United States or the Air National Guard of the United States; or

(iv) Hospitalized or receiving treatment at the expense of the Government for an injury or disease incurred or contracted while on such active duty for training or full-time duty, traveling to or from such active duty for training or full-time duty, or on inactive-duty training.

(4) Any member of the Reserve Officers' Training Corps of the United States, Army, Navy, or Air Force, whose death occurs while:

(i) Attending an authorized training camp or cruise;

(ii) Performing authorized travel to or from that camp or cruise; or

(iii) Hospitalized or receiving treatment at the expense of the Government for injury or disease incurred or contracted while attending such camp or cruise or while traveling to or from such camp or cruise.

(5) Any citizen of the United States who, during any war in which the United States has been or may hereafter be engaged, served in the armed forces of any government allied with the United States during that war, whose last service ended honorably by death or otherwise, and who was a citizen of the United States at the time of entry into that service and at the time of death.

(6) Commissioned officers, United States Coast and Geodetic Survey (now National Oceanic and Atmospheric Administration) who die during or subsequent to the service specified in the following categories and whose last service terminated honorably:

(i) Assignment to areas of immediate military hazard.

(ii) Served in the Philippine Islands on December 7, 1941.

(iii) Transferred to the Department of the Army or the Department of the Navy under certain statutes.

(7) Any commissioned officer of the United States Public Health Service who served on full-time duty on or after July 29, 1945, if the service falls within the meaning of active duty for training as defined in 38 U.S.C. 101(22) or inactive duty training as defined in 38 U.S.C. 101(23) and whose death resulted from a disease or injury incurred or aggravated in line of duty. Also, any commissioned officer of the Regular or Reserve Corps of the Public Health Service who performed active service prior to July 29, 1945 in time of war; on detail for duty with the Armed Forces; or while the service was part of the military forces of the United States pursuant to Executive order of the President.

(b) *Derivatively eligible persons.* Those connected to an individual described in paragraph (a) of this section through a relationship described in § 553.12(b). Such individuals may be inurned if space is available in the primarily eligible person's niche.

§ 553.14 Eligibility for interment of cremated remains in the Arlington National Cemetery Unmarked Area.

(a) The cremated remains of any person eligible for interment in Arlington National Cemetery as described in § 553.12 may be interred in the designated Arlington National Cemetery Unmarked Area.

(b) Cremated remains must be interred in a biodegradable container or placed directly into the ground without a container. Cremated remains are not authorized to be scattered at this site or at any location within Arlington National Cemetery.

(c) There will be no headstone or marker for any person choosing this method of interment. A permanent register will be maintained by the Executive Director.

(d) Consistent with the one-gravesite-per-family policy, once a person is interred in the Unmarked Area, any derivatively eligible persons and spouses must be interred in this manner. This includes spouses who are also primarily eligible persons. No additional gravesite, niche, or memorial marker in a memorial area will be authorized.

§ 553.15 Eligibility for group burial in Arlington National Cemetery.

(a) The Executive Director may authorize a group burial in Arlington National Cemetery whenever several people, at least one of whom is an active duty service member, die during a military-related activity and not all remains can be individually identified.

(b) Before authorizing a group burial that includes both United States and foreign decedents, the Executive Director will notify the Department of State and request that the Department of State notify the appropriate foreign embassy.

§ 553.16 Eligibility for memorialization in an Arlington National Cemetery memorial area.

(a) With the authority granted by 38 U.S.C. 2409, a memorial marker may be placed in an Arlington National Cemetery memorial area to honor the memory of service members or veterans, who are eligible for interment under § 553.12(a) and:

(1) Who are missing in action;

(2) Whose remains have not been recovered or identified;

(3) Whose remains were buried at sea, whether by the member's or veteran's own choice or otherwise;

(4) Whose remains were donated to science; or

(5) Whose remains were cremated and the cremated remains were scattered without interment or inurnment of any portion of those remains.

(b) When the remains of a primarily eligible person are unavailable for one of the reasons listed in paragraph (a) of this section, and a derivatively eligible person who predeceased the primarily eligible person is already interred or inurned in Arlington National Cemetery, the primarily eligible person may be memorialized only on the existing headstone or on a replacement headstone, ordered with a new inscription. Consistent with the one-gravesite-per-family policy, a separate marker in a memorial area is not authorized.

(c) When a memorial marker for a primarily eligible person is already in place in a memorial area, and a derivatively eligible person is subsequently interred or inurned in Arlington National Cemetery, an inscription memorializing the primarily eligible person will be placed on the new headstone or niche cover. Consistent with the one-gravesite-per-family policy, the memorial marker will then be removed from the memorial area.

§ 553.17 Arlington National Cemetery interment/inurnment agreement.

(a) A derivatively eligible person who predeceases the primarily eligible person may be interred or inurned in Arlington National Cemetery only if the primarily eligible person agrees in writing to be interred in the same gravesite or inurned in the same niche at his or her time of need and that his or her estate shall pay for all expenses related to disinterment or disinurnment of the predeceased person from Arlington National Cemetery if the primarily eligible person is not interred or inurned as agreed.

(b) If the primarily eligible person becomes ineligible for interment or inurnment in Arlington National Cemetery or the personal representative or primary next of kin decides that the primarily eligible person will be interred or inurned elsewhere, the remains of any predeceased person may be removed from Arlington National Cemetery at no cost to the Government.

§ 553.18 Eligibility for burial in U.S. Soldiers' and Airmen's Home National Cemetery.

Only the residents of the Armed Forces Retirement Home are eligible for interment in the U.S. Soldiers' and Airmen's Home National Cemetery. Resident eligibility criteria for the Armed Forces Retirement Home is provided for at 24 U.S.C. 412.

§ 553.19 Ineligibility for interment, inurnment, or memorialization in an Army National Military Cemetery.

The following persons are not eligible for interment, inurnment, or memorialization in an Army National Military Cemetery:

(a) A father, mother, brother, sister, or in-law solely on the basis of his or her relationship to a primarily eligible person, even though the individual is:

(1) Dependent on the primarily eligible person for support; or

(2) A member of the primarily eligible person's household.

(b) A person whose last period of service was not characterized as an honorable discharge (*e.g.*, a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal), regardless of whether the person:

(1) Received any other veterans' benefits; or

(2) Was treated at a Department of Veterans Affairs hospital or died in such a hospital.

(c) A person who has volunteered for service with the U.S. Armed Forces, but has not yet entered on active duty.

(d) A former spouse whose marriage to the primarily eligible person ended in divorce.

(e) A spouse who predeceases the primarily eligible person and is interred or inurned in a location other than Arlington National Cemetery, and the primarily eligible person remarries.

(f) A divorced spouse of a primarily eligible person.

(g) Otherwise derivatively eligible persons, such as a spouse or minor child, if the primarily eligible person was not or will not be interred or inurned at Arlington National Cemetery.

(h) A service member who dies while on active duty, if the first General Courts Martial Convening Authority in the service member's chain of command determines that there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a separation or discharge not characterized as an honorable discharge (*e.g.*, a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal) being imposed, but for the death of the service member.

(i) Animal remains. If animal remains are unintentionally commingled with human remains due to a natural disaster, unforeseen accident, act of war or terrorism, violent explosion, or similar incident, and such remains cannot be separated from the remains of an eligible person, then the remains may be interred or inurned with the eligible person, but the identity of the animal remains shall not be inscribed or identified on a niche, marker, headstone, or otherwise.

§ 553.20 Prohibition of interment, inurnment, or memorialization in an Army National Military Cemetery of persons who have committed certain crimes.

(a) *Prohibition.* Notwithstanding §§ 553.12–16, 553.18, and 553.22, pursuant to 10 U.S.C. 985 and 38 U.S.C. 2411, the interment, inurnment, or memorialization in an Army National Military Cemetery of any of the following persons is prohibited:

(1) Any person identified in writing to the Executive Director by the Attorney General of the United States, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal capital crime and whose conviction is final (other than a person whose sentence was commuted by the President).

(2) Any person identified in writing to the Executive Director by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a State capital crime and whose conviction is final (other than a person whose sentence was commuted by the Governor of the State).

(3) Any person found under procedures specified in § 553.21 of this part to have committed a Federal or State capital crime but who has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution. Notice from officials is not required for this prohibition to apply.

(4) Any person identified in writing to the Executive Director by the Attorney General of the United States or by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal or State crime causing the person to be a Tier III sex offender for purposes of the Sex Offender Registration and Notification Act, who for such crime is sentenced to a minimum of life imprisonment and whose conviction is final (other than a person whose sentence was commuted by the President or the Governor of a State, as the case may be).

(b) *Notice.* The Executive Director is designated as the Secretary of the Army's representative authorized to receive from the appropriate Federal or State officials notification of conviction of capital crimes referred to in this section.

(c) *Confirmation of person's eligibility.*

(1) If notice has not been received, but the Executive Director has reason to believe that the person may have been convicted of a Federal capital crime or a State capital crime, the Executive Director shall seek written confirmation from:

(i) The Attorney General of the United States, with respect to a suspected Federal capital crime; or

(ii) An appropriate State official, with respect to a suspected State capital crime.

(2) The Executive Director will defer the decision on whether to inter, inurn, or memorialize a decedent until a written response is received.

§ 553.21 Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.

(a) *Preliminary Inquiry.* If the Executive Director has reason to believe that a decedent may have committed a Federal capital crime or a State capital crime but has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution, the Executive Director shall submit the issue to the Army General Counsel. The Army General Counsel or his or her designee shall initiate a preliminary inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information.

(b) *Decision after Preliminary Inquiry.* If, after conducting the preliminary inquiry described in paragraph (a), the Army General Counsel or designee determines that credible evidence exists suggesting the decedent may have committed a Federal capital crime or State capital crime, then further proceedings under this section are warranted to determine whether the decedent committed such crime. Consequently the Army General Counsel or his or her designee shall present the personal representative with a written notification of such preliminary determination and a dated, written notice of the personal representative's procedural options.

(c) *Notice and Procedural Options.* The notice of procedural options shall indicate that, within fifteen days, the personal representative may:

(1) Request a hearing;

(2) Withdraw the request for interment, inurnment, or memorialization; or

(3) Do nothing, in which case the request for interment, inurnment, or memorialization will be considered to have been withdrawn.

(d) *Time computation.* The fifteen-day time period begins on the calendar day immediately following the earlier of the day the notice of procedural options is delivered in person to the personal representative or is sent by U.S. registered mail or, if available, by electronic means to the personal representative. It ends at midnight on the fifteenth day. The period includes weekends and holidays.

(e) *Hearing.* The purpose of the hearing is to allow the personal representative to present additional information regarding whether the decedent committed a Federal capital crime or a State capital crime. In lieu of making a personal appearance at the hearing, the personal representative may submit relevant documents for consideration.

(1) If a hearing is requested, the Army General Counsel or his or her designee shall conduct the hearing.

(2) The hearing shall be conducted in an informal manner.

(3) The rules of evidence shall not apply.

(4) The personal representative and witnesses may appear, at no expense to the Government, and shall, in the discretion of the Army General Counsel or his or her designee, testify under oath. Oaths must be administered by a person who possesses the legal authority to administer oaths.

(5) The Army General Counsel or designee shall consider any and all relevant information obtained.

(6) The hearing shall be appropriately recorded. Upon request, a copy of the record shall be provided to the personal representative.

(f) *Final Determination.* After considering the opinion of the Army General Counsel or his or her designee, and any additional information submitted by the personal representative, the Secretary of the Army or his or her designee shall determine the decedent's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

(1) The determination shall be based on evidence that supports or undermines a conclusion that the decedent's actions satisfied the elements of the crime as established by the law of the jurisdiction in which the decedent would have been prosecuted.

(2) If an affirmative defense is offered by the decedent's personal representative, a determination as to whether the defense was met shall be made according to the law of the jurisdiction in which the decedent would have been prosecuted.

(3) Mitigating evidence shall not be considered.

(4) The opinion of the local, State, or Federal prosecutor as to whether he or she would have brought charges against the decedent had the decedent been available is relevant but not binding and shall be given no more weight than other facts presented.

(g) *Notice of Decision.* The Executive Director shall provide written notification of the Secretary's decision to the personal representative.

§ 553.22 Exceptions to policies for interment, inurnment, or memorialization at Arlington National Cemetery.

(a) As a national military cemetery, eligibility standards for interment, inurnment, or memorialization are based on honorable military service. Exceptions to the eligibility standards for new graves are rarely granted. When granted, exceptions are for those persons who have made significant contributions that directly and substantially benefited the U.S. military.

(b) Requests for an exception to the interment or inurnment eligibility policies shall be considered only after the individual's death.

(c) Requests for an exception to the interment or inurnment eligibility policies shall be submitted to the Executive Director and shall include any documents required by the Executive Director.

(d) The primary next of kin is responsible for providing and certifying the authenticity of all documents and swearing to the accuracy of the accounting provided to support the request for exception to the interment or inurnment eligibility policies.

(e) Disapproved requests will be reconsidered only when the personal representative or next of kin submits new and substantive information not previously considered by the Secretary of the Army. Requests for reconsideration shall be submitted directly to the Executive Director. Requests for reconsideration not supported by new and substantive information will be denied by the Executive Director after review and advice from the Army General Counsel or his or her designee. The Executive Director shall notify the personal representative or next of kin of the decision of the reconsideration. The decision by the Army General Counsel or the Secretary of the Army, as the case may be, is final and not appealable.

(f) Under no circumstances, will exceptions to policies be considered or granted for those individuals prohibited from interment by virtue of § 553.20 or § 553.21 above.

§ 553.23 Placement of cremated remains at Army National Military Cemeteries.

All cremated remains shall be interred or inurned. The scattering of cremated remains and the burial of symbolic containers are prohibited in Army National Military Cemeteries.

§ 553.24 Subsequently recovered remains.

Subsequently recovered identified remains of a decedent shall be reunited in one gravesite or urn, or as part of a group burial either in an Army National Military Cemetery or other cemetery. Subsequently recovered identified remains may also be interred in the Arlington National Cemetery Tomb of Remembrance.

§ 553.25 Disinterments and disinurnments of remains.

(a) Interments and inurnments in Army National Military Cemeteries are considered permanent.

(b) Requests for disinterment or disinurnment of individually buried or inurned remains are considered requests for exceptions to this policy, and must be addressed to the Executive Director for decision. The request must include:

(1) A full statement of the reasons for the disinterment or disinurnment of the remains from the personal representative or primary next of kin who directed the original interment or inurnment if still living, or if not, the current personal representative or primary next of kin;

(2) A notarized statement from each living close relative of the decedent that he or she does not object to the proposed disinterment or disinurnment; and

(3) A notarized statement by a person who has personal knowledge of the decedent's relatives stating that the persons giving statements comprise all of the decedent's living close relatives.

(4) An appropriate funding source for the disinterment or disinurnment, as disinterments and disinurnments of individually buried or inurned remains must be accomplished without expense to the Government.

(c) The Executive Director shall carry out disinterments and disinurnments directed by a court of competent jurisdiction upon presentation of a lawful, original court order and after consulting with the Army General Counsel or his or her designee.

(d) Remains interred in a group burial may be disinterred only if, after the completion of identification processing of any subsequently recovered remains, each decedent's remains have not been individually identified and it is determined that available technology is likely to assist in the identification process of the previously interred group remains. Requests for disinterment of group remains must be addressed to the Executive Director by the appropriate Military Department's Secretary or his or her designee for decision. The request must include:

(1) A statement from the Joint Prisoner of War/Missing in Action Accounting Command certifying that subsequent to the interment or inurnment of the decedents, remains have been recovered from the site of the casualty incident, and that the remains of each individual U.S. citizen, legal resident, or former service member have not been previously identified from either the remains originally recovered or from the subsequently recovered portions.

(2) Sufficient circumstantial and anatomical evidence from the Joint Prisoner of War/Missing in Action Accounting Command, which when combined with contemporary forensic or other scientific techniques, would lead to a high probability of individual identification of the interred group remains.

(3) Copies of the Military Department's notification to all the living close relatives of the decedents advising them of the proposed disinterment.

(4) A time period identified by the Joint Prisoner of War/Missing in Action Accounting Command during which it proposes to perform forensic or scientific techniques for individual identification processing.

(5) An anticipated time period as to when the Joint Prisoner of War/Missing in Action Accounting Command will return any unidentified remains to Arlington National Cemetery or will notify the cemetery that individual identifications of the group remains are complete and no remains will be returned.

(e) Disinterment or disinurnment is not permitted for the sole purpose of splitting remains or permanently keeping any portion of the remains in a location other than Arlington National Cemetery.

(f) Disinterment of previously designated group remains for the sole purpose of individually segregating the group remains is not permitted unless the requirements of paragraph (d) of this section are met.

§ 553.26 Design of Government-furnished headstones, niche covers, and memorial markers.

(a) Headstones and memorial markers shall be white marble in an upright slab design. Flat-type granite markers may be used, at the Executive Director's discretion, when the terrain or other obstruction precludes use of an upright marble headstone or memorial marker.

(b) Niche covers shall be white marble.

(c) The Executive Director shall approve the design of headstones and memorial markers erected for group burials, consistent with the policies of the Secretary of Veterans Affairs.

§ 553.27 Inscriptions on Government-furnished headstones, niche covers, and memorial markers.

(a) Inscriptions on Government-furnished headstones, niche covers, and memorial markers will be made according to the policies and specifications of the Secretary of the Army, consistent with the policies of the Secretary of Veterans Affairs.

(b) No grades, titles, or ranks other than military grades granted pursuant to title 10, United States Code, will be engraved on Government-furnished headstones, niche covers, and memorial markers. Honorary grades, titles, or ranks granted by States, governors, and others shall not be inscribed on headstones, niche covers, or memorial markers.

(c) Memorial markers must include the words "In Memory of" preceding the inscription.

(d) The words "In Memory of" shall not precede the inscription of a decedent whose remains are interred or inurned.

§ 553.28 Private headstones and markers.

(a) Construction and installation of private headstones and markers in lieu of Government-furnished headstones and markers is permitted only in sections of Army National Military Cemeteries in which private memorials and markers were authorized as of January 1, 1947. These headstones or markers must be of simple design, dignified, and appropriate for a military cemetery as determined by the Executive Director.

(b) The design and inscription of a private headstone or marker must be approved by the Executive Director prior to its construction and placement. All private headstones and markers will be designed to conform to the dimensions and profiles specified by the Executive Director and will be inscribed with the location of the gravesite.

(c) Placement of a private headstone or marker is conditional upon the primary next of kin agreeing in writing to maintain it in a manner acceptable to the Government. Should the headstone or marker become unserviceable at any time and the primary next of kin fail to repair or replace it, or if the marker is not updated to reflect all persons buried in that gravesite within 6 months of the most recent burial, the Executive Director reserves the right to remove and dispose of the headstone or marker and replace it with a standard, Government-furnished headstone or marker.

(d) The construction of a headstone or marker to span two gravesites will be permitted only in those sections in which headstones and markers are presently spanning two gravesites and only with the express understanding that in the event both gravesites are not utilized for burials, the headstone or marker will be relocated to the center of the occupied gravesite, if possible. Such relocation must be accomplished at no expense to the Government. The Executive Director reserves the right to remove and dispose of the headstone or marker and to mark the gravesite with a Government-furnished headstone or marker if the personal representative or primary next of kin fails to relocate the headstone or marker as requested by the Executive Director.

(e) Separate headstones or markers may be constructed on a lot (two gravesites) for a service member and spouse, provided that each headstone or marker is set at the head of the gravesite after interment has been made.

(f) At the time a headstone or marker is purchased, arrangements must be made with an appropriate commercial firm to ensure that additional inscriptions will be promptly inscribed following each succeeding interment in the gravesite. Foot markers must be authorized by the Executive Director and may only be authorized when there is no available space for an inscription on the front or rear of a private headstone.

(g) Except as may be authorized for marking group burials, ledger monuments of freestanding cross design, narrow shafts, and mausoleums are prohibited.

§ 553.29 Permission to construct private headstones and markers.

(a) Headstone firms must receive permission from the Executive Director to construct a private headstone or marker for use in Army National

Military Cemeteries or to add an inscription to an existing headstone or marker in an Army National Military Cemetery.

(b) Requests for permission must be submitted to the Executive Director and must include:

(1) Written consent from the personal representative or primary next of kin;

(2) Contact information for both the personal representative or primary next of kin and the headstone firm; and

(3) A scale drawing (no less than 1:12) showing all dimensions, or a reproduction showing detailed specifications of design and proposed construction material, finishing, carving, lettering, exact inscription to appear on the headstone or marker, and a trademark or copyright designation.

(c) The Army does not endorse headstone firms but grants permission for the construction of headstones or markers in individual cases.

(d) When using sandblast equipment to add an inscription to an existing headstone or marker, headstone firms shall restore the surrounding grounds in a timely manner as determined by the Executive Director to the condition of the grounds before work began and at no expense to the Government.

§ 553.30 Inscriptions on private headstones and markers.

An appropriate inscription for the decedent will be placed on the headstone or marker in accordance with the dimensions of the stone and arranged in such a manner as to enhance the appearance of the stone. Additional inscriptions may be inscribed following each succeeding interment in the gravesite. All inscriptions will be in accordance with policies established by the Executive Director.

§ 553.31 Memorial and commemorative monuments (other than private headstones or markers).

The placement of memorials or commemorative monuments in Arlington National Cemetery will be carried out in accordance with 38 U.S.C. 2409(b).

§ 553.32 Conduct of memorial services and ceremonies.

(a) The Executive Director shall ensure the sanctity of public and private memorial and ceremonial events.

(b) All memorial services and ceremonies within Army National Military Cemeteries, other than official ceremonies, shall be purely memorial in purpose and may be dedicated only to:

(1) The memory of all those interred, inurned, or memorialized in Army National Military Cemeteries;

(2) The memory of all those who died in the military service of the United States while serving during a particular conflict or while serving in a particular military unit or units; or

(3) The memory of the individual or individuals to be interred, inurned, or memorialized at the particular site at which the service or ceremony is held.

(c) Memorial services and ceremonies at Army National Military Cemeteries will not include partisan political activities.

(d) Private memorial services may be closed to the media and public as determined by the decedent's primary next of kin.

(e) Public memorial services and public wreath-laying ceremonies shall be open to all members of the public to observe.

§ 553.33 Visitors rules for Army National Military Cemeteries.

(a) *Visiting hours.* Visiting hours shall be established by the Executive Director and posted in conspicuous places. No visitor is permitted to enter or remain in an Army National Military Cemetery outside the established visiting hours.

(b) *Destruction or removal of property.* No person shall destroy, damage, mutilate, alter, or remove any monument, gravestone, niche cover, structure, tree, shrub, plant, or other property located within an Army National Military Cemetery.

(c) *Conduct within Army National Military Cemeteries.* Army National Military Cemeteries are a national shrine to the honored dead of the Armed Forces, and certain acts and activities, which may be appropriate elsewhere, are not appropriate in Army National Military Cemeteries. All visitors, including persons attending or taking part in memorial services and ceremonies, shall observe proper standards of decorum and decency while in an Army National Military Cemetery. Specifically, no person shall:

(1) Conduct any memorial service or ceremony within an Army National Military Cemetery without the prior approval of the Executive Director.

(2) Engage in demonstrations prohibited by 38 U.S.C. 2413.

(3) Engage in any orations, speeches, or similar conduct to assembled groups of people, unless such actions are part of a memorial service or ceremony authorized by the Executive Director.

(4) Display any placards, banners, flags, or similar devices within an Army National Military Cemetery, unless first approved by the Executive Director for use in an authorized memorial service or ceremony. This rule does not apply to clothing worn by visitors.

(5) Distribute any handbill, pamphlet, leaflet, or other written or printed matter within an Army National Military Cemetery, except a program approved by the Executive Director to be provided to attendees of an authorized memorial service or ceremony.

(6) Bring a dog, cat, or other animal (other than a service animal or military working dog) within an Army National Military Cemetery. This prohibition does not apply to persons living in quarters located on the grounds of the Army National Military Cemeteries.

(7) Use the cemetery grounds for recreational activities (*e.g.,* physical exercise, running, jogging, sports, or picnics).

(8) Ride a bicycle or similar conveyance in an Army National Military Cemetery, except with a proper pass issued by the Executive Director to visit a gravesite or niche. An individual visiting a relative's gravesite or niche may be issued a temporary pass by the Executive Director to proceed directly to and from the gravesite or niche on a bicycle or similar vehicle or conveyance.

(9) Operate a musical instrument, a loudspeaker, or an audio device without a headset within an Army National Military Cemetery.

(10) Drive any motor vehicle within an Army National Military Cemetery in excess of the posted speed limit.

(11) Park any motor vehicle in any area of an Army National Military Cemetery designated as a no-parking area.

(12) Leave any vehicle in the Arlington National Cemetery Visitors' Center parking area or Soldiers' and Airmen's Home National Cemetery visitors' parking area more than thirty minutes outside of established visiting hours or anywhere else in an Army National Military Cemetery outside of established visiting hours.

(13) Consume or serve alcoholic beverages without prior written permission from the Executive Director.

(14) Possess firearms without prior written permission from the Executive Director. This prohibition does not apply to law enforcement and military personnel in the performance of their official duties. In accordance with locally established policy, military and law enforcement personnel may be required to obtain advance permission from the Executive Director of the Army National Military Cemeteries prior to possessing firearms on the property of an Army National Military Cemetery.

(15) Deposit or throw litter or trash on the grounds of the Army National Military Cemeteries.

(16) Engage in any disrespectful or disorderly conduct within an Army National Military Cemetery.

(d) *Vehicular traffic.* All visitors, including persons attending or taking part in memorial services and ceremonies, will observe the following rules concerning motor vehicle traffic within Arlington National Cemetery:

(1) Visitors arriving by car and not entitled to a vehicle pass pursuant to paragraph (d)(2) of this section are required to park their vehicles in the Visitors' Center parking area or at a location outside of the cemetery.

(2) Only the following categories of vehicles may be permitted access to Arlington National Cemetery roadways and issued a permanent or temporary pass from the Executive Director:

(i) Official Government vehicles being used on official Government business.

(ii) Vehicles carrying persons on official Cemetery business.

(iii) Vehicles forming part of an authorized funeral procession and authorized to be part of that procession.

(iv) Vehicles carrying persons visiting the Arlington National Cemetery gravesites, niches, or memorial areas of relatives or loved ones interred, inurned, or memorialized within Arlington National Cemetery.

(v) Arlington National Cemetery and National Park Service maintenance vehicles.

(vi) Vehicles of contractors who are authorized to perform work within Arlington National Cemetery.

(vii) Concessionaire tour buses authorized by the Executive Director to operate in Arlington National Cemetery.

(viii) Vehicles of employees of ANMC as authorized by the Executive Director.

§ 553.34 Soliciting and vending.

The display or distribution of commercial advertising to or solicitation of business from the public is strictly prohibited within an Army National Military Cemetery, except as authorized by the Executive Director.

§ 553.35 Media.

All officials and staff of the media are subject to the Visitors Rules enumerated in § 553.33 of this part and shall comply with the Department of the Army's media policy.

[FR Doc. 2016–11038 Filed 5–10–16; 8:45 am]

BILLING CODE 3710–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2015–0531; FRL–9946–22–OAR]

Protection of Visibility: Amendments to Requirements for State Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public hearing to be held for the proposed rule titled, "Protection of Visibility: Amendments to Requirements for State Plans" which published in the **Federal Register** on May 4, 2016. The hearing will be held on Wednesday, June 1, 2016, in Denver, Colorado. Please note that this hearing is being held in addition to the May 19, 2016, public hearing in Washington, DC that was announced in the notice of proposed rulemaking.

DATES: *Public Hearing.* The public hearing will be held on Wednesday, June 1, 2016, in Denver, Colorado. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearing. *Comments.* Comments must be received on or before July 5, 2016.

ADDRESSES: *Public Hearing.* The June 1, 2016, public hearing will be held on the 2nd floor of the EPA Region 8 office, 1595 Wynkoop Street, Denver, CO 80202. Identification is required. If your driver's license is issued by American Samoa, Illinois or Missouri, you must present an additional form of identification to enter (*see* **SUPPLEMENTARY INFORMATION** for additional information on this location).

Comments: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0531, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/comments.html.*

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearing, please contact Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (C504–01), Research Triangle Park, NC 27711, telephone (919) 541–0641, fax number (919) 541–5509, email address *long.pam@epa.gov,* no later than Tuesday, May 31, 2016. If you have any questions relating to the public hearing, please contact Ms. Long at the above number.

Questions concerning the May 4, 2016, proposed rule should be addressed to Mr. Christopher Werner, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, (C539–04), Research Triangle Park, NC 27711, telephone (919) 541–5133, email address *werner.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposal for which the EPA is holding the public hearing was published in the **Federal Register** on May 4, 2016, (81 FR 26942) and is available at: *http://www.epa.gov/visibility* and also in docket EPA–HQ–OAR–2015–0531. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information that are submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing.

Written comments must be postmarked by the last day of the comment period. The proposed rule states that the public comment period will close on July 5, 2016.

The public hearing will convene at 9 a.m. (Mountain Daylight Saving Time) and continue until the earlier of 5 p.m. or 1 hour after the last registered speaker has spoken. The EPA will make every effort to accommodate all individuals interested in providing oral testimony. A lunch break is scheduled from 12 p.m. until 1 p.m. Please note that this hearing will be held at a U.S.

government facility. Individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. The REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. These requirements took effect July 21, 2014. If your driver's license is issued by American Samoa, Illinois or Missouri, you must present an additional form of identification to enter the federal building where the public hearing will be held. Enhanced driver's licenses from Minnesota and Washington are acceptable. Acceptable alternative forms of identification include: federal employee badges, passports, enhanced driver's licenses and military identification cards. For additional information for the status of your state regarding REAL ID, go to *http://www.dhs.gov/real-id-enforcement-brief.* In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building, and demonstrations will not be allowed on federal property for security reasons. No drugs or drug paraphernalia (including marijuana) allowed.

If you would like to present oral testimony at the hearing, please notify Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (C504–01), Research Triangle Park, NC 27711, telephone (919) 541–0641, fax number (919) 541–5509, email address *long.pam@epa.gov,* no later than 4:00 p.m. EDT on May 31, 2016. Ms. Long will arrange a general time slot for you to speak. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing.

Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) or in hard copy form. The EPA will not provide audiovisual equipment for presentations unless we receive special requests in advance. Commenters should notify Ms. Long if they will need specific equipment. Commenters should also notify Ms. Long if they need specific translation services for non-English speaking commenters.

The hearing schedule, including the list of speakers, will be posted on the EPA's Web site at *http://www.epa.gov/visibility* prior to the hearing. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking.

How can I get copies of this document and other related information?

The EPA has established a docket for the proposed rule "Protection of Visibility: Amendments to Requirements for State Plans" under Docket ID No. EPA–HQ–OAR–2015–0531 (available at *http://www.regulations.gov*). The EPA has made available information related to the proposed rule at the following Web site: *http://www.epa.gov/visibility.*

Dated: May 5, 2016.

Stephen Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2016–11007 Filed 5–10–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAR Case 2015–017; Docket No. 2015–0017; Sequence No. 1]

RIN 9000–AN02

Federal Acquisition Regulation: Combating Trafficking in Persons—Definition of "Recruitment Fees"

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to provide a definition of "recruitment fees." The FAR policy on combating trafficking in persons prohibits contractors from charging employees recruitment fees, in accordance with the Executive Order entitled "Strengthening Protections Against Trafficking in Persons in Federal Contracts."

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before July 11, 2016 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2015–017 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015–017". Select the link "Comment Now" that corresponds with "FAR Case 2015–017". Follow the instructions on the screen. Please include your name, company name (if any), and "FAR Case 2015–017" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405–0001.

Instructions: Please submit comments only and cite FAR Case 2015–017: Combating Trafficking in Persons—Definition of "Recruitment Fees" in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAR Case 2015–017.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to add a definition of "recruitment fees" to subpart 22.17, Combating Trafficking in Persons, and the associated clause at 52.222–50.

DoD, GSA, and NASA published a final rule entitled Ending Trafficking in Persons (FAR Case 2013–001) in the **Federal Register** at 80 FR 4967, on January 29, 2015. That rule, which implemented Executive Order 13627 and title XVII of the National Defense Authorization Act for Fiscal Year 2013, became effective on March 2, 2015. As implemented in that rule, the policy at FAR section 22.1703(a) and in the clause at 52.222–50(b) prohibits contractors, contractor employees, subcontractors, subcontractor employees, and their agents from charging employees recruitment fees.

II. Discussion and Analysis

A. Early Discussion and Analysis

To provide an opportunity for early input, the Defense Acquisition

Regulations Council and the Civilian Agency Acquisition Council (the Councils) posted on January 28, 2015, at *http://www.acq.osd.mil/dpap/dars/* a draft definition of "recruitment fees," developed by an interagency group of policy experts on human trafficking. Comments were received from four respondents and are available for viewing at that Web site.

The divergence in public input highlighted the tension between providing a comprehensive definition of the term to maximize worker protections, and of ensuring that the definition does not elicit unintended consequences that interfere with contractor business operations. As a result, while the Council has made some changes to the rule to reflect initial input, it has also included a number of questions that warrant additional input from the public (see Section III).

The Councils made some revisions to the draft definition of "recruitment fees," such as—

- Addressing fees, charges, costs, assessments, or other financial obligations assessed against employees or potential employees, associated with the recruiting process, regardless of the manner or timing of their imposition or collection;
- Including charges for testing and training;
- Modifying language to include tips paid as a kickback; and
- Adding language interpreters or translators.

The Councils did not modify the definition of "employee" because the rationale for this narrower definition was specifically addressed in the **Federal Register** with the publication of the second interim rule under FAR Case 2005–012, Implementation of Section 3(b) of the Trafficking Victims Reauthorization Act of 2003, published in the **Federal Register** at 72 FR 46335, 46337, and 46338, on August 17, 2007, and in the final rule published at 74 FR 2741, 2742, and 2743, on January 15, 2009.

The Councils also note that the Department of State Exchange Visitor Program is not subject to the FAR and program fees charged under that program are not considered recruitment fees, as defined in this proposed rule, as was addressed in the preamble to the final rule under FAR Case 2013–001 published in the **Federal Register** at 80 FR 4971, on January 29, 2015.

B. Issues Highlighted for Public Comments

The early public comments, while helpful, have raised a number of questions for the FAR drafters as they work to promulgate a definition that is both effective in reinforcing the prohibition on recruitment fees and understandable and manageable for contractors.

The Councils invite public comment on all aspects of the proposed definition. However, in particular, the Councils request comments on the following questions:

- Are all costs/fees associated with bringing an employee on board properly treated as recruitment fees?
- Are there any additional charges that should be considered recruitment fees?
- Should the definition of a recruitment fee vary depending on whether the job is a professional high-paying, high-skill job or an unskilled, low-paying job? Is the location of the job a factor?
- Are the boundaries (*i.e.,* limitations) of the proposed definition clear? If not, what changes would make the limitations clearer?
- As a general matter, is the illustrative list of recruitment fees helpful in understanding what costs an employee may not be charged? If not, why not?
- What, if any, of the specifically enumerated fees in the proposed definition should be excluded and why?
- What, if any, of the specifically enumerated fees not included in the proposed definition should be added?

C. Specific Elements of the Definition

The Councils especially welcome feedback on the following specific aspects of the proposed rule. For each of the following, please comment on whether addition of the following described language to the illustrative list of recruitment fee would be helpful, unhelpful, or of no impact, and why.

- Submitting applications, making recommendations, recruiting, reserving, committing, soliciting, identifying, considering, interviewing, referring, retaining, transferring, selection, or placing potential job applicants.
- Labor broker services, both one-time and recurring.
- Exit clearances, and security clearances associated with visas.
- Sending, transit and receiving country government-mandated fees, levies, and insurance.
- Pre-employment medical examinations or vaccinations in the sending country.
- Receiving country medical examinations.
- Transportation and subsistence costs while in transit, including, but not limited to, airfare or costs of other modes of international transportation, terminal fees, and travel taxes associated with travel from sending country to receiving country and the return journey at the end of the contract.
- Transportation and subsistence costs from the airport or disembarkation point to the worksite.
- Security deposits and bonds.
- The inclusion of a collateral requirement, such as land deeds, in contracts.
- Contract breach fees.
- An employer's recruiters, agents or attorneys, or other notary or legal fees.
- Insurance.
- Contributions to worker welfare funds or government provided benefits in sending countries required to be paid by supplier.

III. Determinations

Determinations were made in connection with the final rule implementing title XVII (entitled "Ending Trafficking in Government Contracting (ETGCA)") of the National Defense Authorization Act for Fiscal Year 2013 to apply these statutory regulations. For an explanation of the Council's determinations, see the preamble published in the **Federal Register** at 80 FR 4967 and 4983–4986, on January 29, 2015. This proposed rule just clarifies the requirements by adding a definition.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This proposed rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect proposed change to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* However, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The reason for this action is to develop a standard definition of "recruitment fees" in order to clarify how the Government treats this prohibited practice that has been associated with labor trafficking, within the scope of application of the FAR.

The objective of this rule is to clarify the types of charges and fees that contractors, subcontractors, and their employees or agents are prohibited from charging to employees or potential employees, under the Government policy on combating trafficking in persons.

This proposed rule would apply to all entities, whether small or other than small, that are contractors or subcontractors on U.S. Government contracts. In 2014 there were about 350,000 active registrants in the System for Award Management (SAM). DoD, GSA, and NASA estimate approximately half of the registrants (175,000) are small entities that will receive a contract or subcontract in a particular year. However, there would be no actual impact from this rule unless the small entity was planning to charge or allow another entity, acting on their behalf, to charge a recruitment fee to an employee or potential employee. There is no data available to estimate this impact. Further, for the definition of "small business," the Regulatory Flexibility Act refers to the Small Business Act, which in turn allows the U.S. Small Business Administration (SBA) Administrator to specify detailed definitions or standards (5 U.S.C. 601(3) and 15 U.S.C. 632(a)). The SBA regulations at 13 CFR 121.105(a)(1) discuss who is a small business: "Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor." So, this initial regulatory flexibility analysis does not need to address impact on foreign small entities with Government contracts or subcontracts that are not small businesses as defined by the Small Business Act.

There are no reporting or recordkeeping requirements associated with this rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There were no significant alternatives identified that would meet the objective of the rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015–017), in correspondence.

VI. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

Dated: May 5, 2016.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA and NASA propose amending 48 CFR parts 22 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 2. Amend section 22.1702 by adding, in alphabetical order, the definition "Recruitment fees" to read as follows:

22.1702 Definitions.

* * * * *

Recruitment fees means the following:

(1) Recruitment fees include, but are not limited to, fees, charges, costs, assessments, or other financial obligations assessed against employees or potential employees, associated with the recruiting process, regardless of the manner of their imposition or collection—

(i) For soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, testing, training, providing new-hire orientation, recommending, or placing employees or potential employees;

(ii) For covering the cost, in whole or in part, of advertising;

(iii) For any activity related to obtaining permanent or temporary labor certification;

(iv) For processing petitions;

(v) For visas and any fee that facilitates an employee obtaining a visa such as appointment and application fees;

(vi) For government-mandated costs such as border crossing fees;

(vii) For procuring photographs and identity documentation, including any nongovernmental passport fees;

(viii) Charged as a condition of access to the job opportunity, including procuring medical examinations and immunizations and obtaining background, reference and security clearance checks and examinations; additional certifications;

(ix) For an employer's recruiters, agents or attorneys, or other notary or legal fees; and

(x) For language interpreters or translators.

(2) Any fee, charge, cost, or assessment may be a recruitment fee regardless of whether the payment is in property or money, deducted from wages, paid back in wage or benefit concessions, paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute, remitted in connection with recruitment, or collected by an employer or a third party, including, but not limited to—

(i) Agents;

(ii) Recruiters;

(iii) Staffing firms (including private employment and placement firms);

(iv) Subsidiaries/affiliates of the employer;

(v) Any agent or employee of such entities; and

(vi) Subcontractors at all tiers.

* * * * *

■ 3. Amend section 22.1703 by—

■ a. Revising paragraph (a)(5)(i); and

■ b. Removing from paragraph (a)(6) the word "employees" and adding "employees or potential employees" in its place.

The revisions read as follows:

22.1703 Policy.

* * * * *

(a) * * *

(5)(i) Using misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–5 by—

■ a. Revising the date of the clause and paragraphs (b)(33)(i) and (e)(1)(xi)(A); and

■ b. In alternate II, revising the date and paragraph (e)(1)(ii)(J)(*1*).

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (DATE)

* * * * *

(b) * * *

____(33)(i) 52.222–50, Combating Trafficking in Persons (DATE) (22 U.S.C. chapter 78 and E.O. 13627).

* * * * *

(e)(1) * * *

(xi) * * *

____(A) 52.222–50, Combating Trafficking in Persons (DATE) (22 U.S.C. chapter 78 and E.O 13627).

* * * * *

Alternate II (DATE). * * *

* * * * *

(e)(1) * * *

(ii) * * *

(J) ____(*1*) 52.222–50, Combating Trafficking in Persons (DATE) (22 U.S.C. chapter 78 and E.O 13627).

* * * * *

■ 5. Amend section 52.213–4 by revising the date of the clause and paragraphs (a)(2)(viii) and (b)(1)(viii)(A) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DATE)

(a) * * *

(2) * * *

(viii) 52.244–6, Subcontracts for Commercial Items (DATE).

* * * * *

(b) * * *

(1) * * *

(viii)(A) 52.222–50, Combating Trafficking in Persons (DATE) (22 U.S.C. chapter 78 and E.O 13627) (Applies to all solicitations and contracts).

* * * * *

■ 6. Amend section 52.222–50 by—

■ a. Revising the date of the clause;

■ b. Adding to paragraph (a), in alphabetical order, the definition "Recruitment fees";

■ c. Revising paragraph (b)(5)(i);

■ d. Removing from paragraph (b)(6) the word "employees" and adding "employees or potential employees" in its place; and

■ e. Removing from paragraph (h)(3)(iii) the word "employee," and adding "employee or potential employee," in its place.

The revisions and addition read as follows:

52.222–50 Combating Trafficking in Persons.

* * * * *

Combating Trafficking in Persons (DATE)

(a) * * *

Recruitment fees means the following:

(1) Recruitment fees include, but are not limited to, fees, charges, costs, assessments, or other financial obligations assessed against employees or potential employees, associated with the recruiting process, regardless of the manner of their imposition or collection—

(i) For soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, testing, training, providing new-hire orientation, recommending, or placing employees or potential employees;

(ii) For covering the cost, in whole or in part, of advertising;

(iii) For any activity related to obtaining permanent or temporary labor certification;

(iv) For processing petitions;

(v) For visas and any fee that facilitates an employee obtaining a visa such as appointment and application fees;

(vi) For government-mandated costs such as border crossing fees;

(vii) For procuring photographs and identity documentation, including any nongovernmental passport fees;

(viii) Charged as a condition of access to the job opportunity, including procuring medical examinations and immunizations and obtaining background, reference and security clearance checks and examinations; additional certifications;

(ix) For an employer's recruiters, agents or attorneys, or other notary or legal fees, and

(x) For language interpreters or translators.

(2) Any fee, charge, cost, or assessment may be a recruitment fee regardless of whether the payment is in property or money, deducted from wages, paid back in wage or benefit concessions, paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute, remitted in connection with recruitment, or collected by an employer or a third party, including, but not limited to—

(i) Agents;

(ii) Recruiters;

(iii) Staffing firms (including private employment and placement firms);

(iv) Subsidiaries/affiliates of the employer;

(v) Any agent or employee of such entities; and

(vi) Subcontractors at all tiers.

* * * * *

(b) * * *

(5)(i) Using misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;

* * * * *

■ 7. Amend section 52.244–6 by revising the date of the clause and paragraph (c)(1)(x)(A) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (DATE)

* * * * *

(c)(1) * * *

(x)(A) 52.222–50, Combating Trafficking in Persons (DATE) (22 U.S.C. chapter 78 and E.O. 13627).

* * * * *

[FR Doc. 2016–11056 Filed 5–10–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 190, 191, 192, 195, and 199

[Docket No. PHMSA–2016–0032]

Pipeline Safety: Meeting of the Gas Pipeline Safety Advisory Committee and the Liquid Pipeline Safety Advisory Committee

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a public meeting of the Gas Pipeline Advisory Committee (GPAC), also known as the Technical Pipeline Safety Standards Committee, and the Liquid Pipeline Advisory Committee (LPAC), also known as the Technical Hazardous Liquid Pipeline Safety Standards Committee. The GPAC will meet to discuss a proposed rulemaking to address regulatory requirements involving plastic piping systems used in gas services and both committees will meet jointly to discuss a proposed rulemaking to strengthen the federal pipeline safety regulations and to address sections 9 (accident and incident reporting) and 13 (cost recovery for design-review work) of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (2011 Act). Both committees will also be briefed on the "Pipeline Safety: Safety of Gas

Transmission and Gathering Pipelines" proposed rulemaking.

DATES: The committees will meet as follows:

- Wednesday, June 1, 2016, from 1:00 p.m. to 5:00 p.m., ET—GPAC only
- Thursday, June 2, 2016, from 8:30 a.m. to 5:00 p.m., ET—Joint Meeting (GPAC/LPAC)
- Friday, June 3, 2016, from 8:30 a.m. to 12:30 p.m., ET.—LPAC only

The meetings will not be webcast; however, presentations will be available on the meeting Web site and posted on the E-Gov Web site: *http://www.regulations.gov* under docket number PHMSA–2016–0032 within 30 days following the meeting.

ADDRESSES: The meeting will be held at a location yet to be determined in the Washington, DC Metropolitan area. The meeting location, agenda and any additional information will be published on the following pipeline advisory committee meeting and registration page at *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=113.*

Public Participation

This meeting will be open to the public. Members of the public who wish to attend in person are asked to RSVP to *cheryl.whetsel@dot.gov* with your name and affiliation no later than May 23, 2016, in order to facilitate entry and guarantee seating. Members of the public who attend in person will also be provided an opportunity to make a statement during the meeting.

Services for Individuals with Disabilities: The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Cheryl Whetsel at *cheryl.whetsel@dot.gov* by May 23, 2016.

Written comments: Persons who wish to submit written comments on the meeting may be submitted to the docket in the following ways:

E-Gov Web site: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590–001.

Hand Delivery: Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays.

Instructions: Identify the docket number PHMSA–2016–0032 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477) or view the Privacy Notice at *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on PHMSA–2016–0032." The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to federal offices in Washington, DC, we recommend that persons consider an alternative method (Internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information about the meeting, contact Cheryl Whetsel by phone at 202–366–4431 or by email at *cheryl.whetsel@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Details and Agenda

The Pipeline and Hazardous Materials Safety Administration will hold meetings of the GPAC and LPAC. The GPAC will be considering and voting on the notice of proposed rulemaking (NPRM) titled: Pipeline Safety: Plastic Pipe Rule (80 FR 29263; May 21, 2015), and in a joint meeting of the GPAC and LPAC, members will consider and vote on the NPRM titled: Pipeline Safety: Operator Qualification, Cost Recovery, Accident and Incident Notification, and Other Pipeline Safety Proposed Changes (80 FR 39916; July 10, 2015). Other topics of discussion will include the regulatory agenda and agency and stakeholder priorities. A briefing on the NPRM, titled: Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines (81 FR 20722; April 8, 2016), will also be presented to both committees and the public.

The agenda will be published to include committee discussions and votes on the two rules mentioned above. PHMSA staff will also brief the committees on several regulatory and policy initiatives.

II. Committee Background

The GPAC and LPAC are statutorily-mandated advisory committees that advise PHMSA on proposed safety standards, risk assessments, and safety policies for natural gas pipelines and for hazardous liquid pipelines. Both committees were established under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) and the Pipeline Safety Law (49 U.S.C. Chap. 601). Each committee consists of 15 members—with membership evenly divided among the federal and state government, the regulated industry, and the public. The committees advise PHMSA on the technical feasibility, practicability, and cost-effectiveness of each proposed pipeline safety standard.

Issued in Washington, DC, on May 6, 2016, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. 2016–11119 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 81, No. 91
Wednesday, May 11, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report (FNS–834)

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a reinstatement, without change, of a previously approved collection for which approval has expired for the State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report (FNS–834).

DATES: Written comments must be received on or before July 11, 2016.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments will be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. Comments may also be sent to: Lynnette Thomas, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Lynnette Thomas at 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report (FNS–834).

Form Number: FNS–834.

OMB Number: 0584–0577.

Expiration Date: Not Yet Determined.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The Richard B. Russell National School Lunch Act (NSLA), as amended, authorizes the National School Lunch Program (NSLP). Section 101(b) of the HHFKA, amended section 9(b)(4) of the NSLA (42 U.S.C. 1758(b)(4)) to define required percentage benchmarks for directly certifying children who are members of households receiving assistance under Supplemental Nutrition Assistance Program (SNAP) and further amended the NSLA to require, beginning with SY 2011–2012, that each State agency that does not meet the benchmark for a particular school year develop, submit, and implement a continuous improvement plan (CIP) to fully meet the benchmarks and to improve direct certification for the following school year.

FNS must calculate the direct certification rates for States and compare them to the benchmarks to determine which States will need to submit CIPs. To calculate these direct certification rates, FNS annually collects specific direct certification data elements from SNAP State agencies and NSLP State agencies on form FNS–834, State Agency (NSLP/SNAP) Direct Certification Rate Data Element Report. The form is available for review in the Supporting Documents of this docket.

The FNS–834 will be made available in the Food Programs Reporting System (FPRS) (OMB Control Number 0584–0594, expiration date 6/30/2017). The burden for 0584–0577 will subsequently be merged into the FPRS system.

Affected Public (Respondents): State Agencies.

Estimated Number of Respondents: 106.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 106.

Average Hours per Response: .5.

Estimated Total Annual Burden on Respondents: 53.

REPORTING (STATE AGENCIES)

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
NSLP State agencies must annually report data to FNS for calculating direct certification rate.	7 CFR 245.13(c)	54	1	54	0.5	27
SNAP State agencies must annually report data to FNS for calculating direct certification rates.	7 CFR 272.8(a)(5)	52	1	52	0.5	26
Total Reporting Burden		106	1	106	0.5	53

Dated: May 2, 2016.

David Burr,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2016–11044 Filed 5–10–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Medicine Bow-Routt Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Medicine Bow-Routt Resource Advisory Committee (RAC) will meet in Walden, Colorado. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/goto/mbr/advisorycommittee.*

DATES: The meeting will be held May 27, 2016, at 10:00 a.m., Mountain Standard Time.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Parks Ranger District Office, 100 Main Street, Walden, Colorado.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Aaron Voos, RAC Coordinator, by phone at 307–745–2323 or via email at *atvoos@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. To review and recommend projects authorized under title II of the Act, and
2. Update RAC members on the progress of previously approved projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 20, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Dennis Jaeger, RAC Designated Federal Officer, 2468 Jackson Street, Laramie, Wyoming 82070; by email to *djaeger01@fs.fed.us,* or via facsimile to 307–745–2467.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: May 2, 2016.

Dennis Jaeger,

Forest Supervisor, Medicine Bow-Routt National Forests & Thunder Basin National Grassland.

[FR Doc. 2016–10783 Filed 5–10–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Generic Clearance for Proposed Information Collection; Comment Request; Collection of State Administrative Records Data

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written comments must be submitted on or before July 11, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc .gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Amy O'Hara, U.S. Census Bureau, 4600 Silver Hill Road, Room 5k043, Washington, DC 20233 8400 at (301) 763–5757.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request a general clearance for acquiring State administrative records in order to improve efficiency and accuracy in our data collections, and to improve measures of the population and economy. The Census Bureau has undertaken research projects to integrate and link State administrative records with Census Bureau data from current surveys and censuses.

The Census Bureau uses the State administrative records linked with other survey and census records to conduct further research and improve operations with surveys and censuses, including 2020 Census Operations. The Census Bureau benefits from these projects by improving data quality and estimates, as well as studies of program participation over time. State data providers have benefited through access to tabulated data and reports to better understand the demographic characteristics of program participants and to administer their programs.

II. Method of Collection

The Census Bureau will contact the State Agencies to discuss uses of State administrative records. The State Agencies will enter data sharing agreements with the Census Bureau to provide administrative records data. The State Agency will transfer State administrative records to the Census Bureau via secure File Transfer Protocol or appropriately encrypted CD–ROM or DVD–ROM.

III. Data

OMB Control Number: 0607–XXXX.

Form Number(s): Information will be collected in the form of a data transfer to the Census Bureau. No form will be used.

Type of Review: Regular submission.

Affected Public: State governments.

Estimated Number of Respondents: 50 states and the District of Columbia.

Estimated Time per Response: 75 hours.

Estimated Total Annual Burden Hours: 3,825 hours.

Estimated Total Annual Cost to Public: $80,325.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 6.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 6, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–11059 Filed 5–10–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1997]

Approval of Subzone Status; H–J Enterprises, Inc./H–J International, Inc.; High Ridge, Missouri

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ". . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the St. Louis County Port Authority, grantee of Foreign-Trade Zone 102, has made application to the Board for the establishment of a subzone at the facilities of H–J Enterprises, Inc./H–J International, Inc., located in High Ridge, Missouri (FTZ Docket B–73–2015, docketed November 5, 2015);

Whereas, notice inviting public comment has been given in the **Federal Register** (80 FR 69937, November 12, 2015) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facilities of H–J Enterprises, Inc./H–J International, Inc., located in High Ridge, Missouri (Subzone 102E), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 27th day of April 2016.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–11000 Filed 5–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–29–2016]

Proposed Foreign-Trade Zone—Vancouver, Washington; Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port of Vancouver USA to establish a foreign-trade zone in the Vancouver, Washington, area, within and adjacent to the Portland, Oregon CBP port of entry, under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new "subzones" or "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the FTZ Board's standard 2,000-acre activation limit for a zone project. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 4, 2016. The applicant is authorized to make the proposal under the State of Washington Statute RCW 53.08.030.

The proposed zone would be the 2nd zone for the Portland Oregon CBP port of entry. The existing zone is as follows: FTZ 45, Portland, Oregon (Grantee: Port of Portland, Board Order 140, December 18, 1978).

The applicant's proposed service area under the ASF would be Clark County, Washington. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Portland, Oregon U.S. Customs and Border Protection port of entry.

The proposed zone would include one "magnet" site: Proposed Site 1 (485 acres)—Port of Vancouver Complex, Terminals 2, 3, 4, and 5, Harborside Drive and Gateway Avenue, Vancouver, Clark County. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted.

The application indicates a need for zone services in the Vancouver, Washington area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific production approvals are not being sought at this time. Such requests would be made to the FTZ Board on a case-by-case basis.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is July 11, 2016. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 25, 2016.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room

21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the "Reading Room" section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: May 4, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–10997 Filed 5–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1996]

Reorganization of Foreign-Trade Zone 151 (Expansion of Service Area) Under Alternative Site Framework; Findlay, Ohio

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Findlay Hancock County Chamber of Commerce, grantee of Foreign-Trade Zone 151, submitted an application to the Board (FTZ Docket B–33–2015, docketed May 21, 2015) for authority to expand the service area of the zone to include Van Wert County, Ohio, as described in the application, adjacent to the Fort Wayne, Indiana Customs and Border Protection port of entry;

Whereas, notice inviting public comment was given in the **Federal Register** (80 FR 30660, May 29, 2015) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 151 to expand the service area under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone.

Signed at Washington, DC, this 27th day of April 2016.

Ronald K. Lorentzen

Acting Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–11002 Filed 5–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–813]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Rescission of Countervailing Duty Administrative Review; 2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty order on steel wire garment hangers from the Socialist Republic of Vietnam (Vietnam) for the period January 1, 2015 through December 31, 2015.

DATES: Effective May 11, 2016.

FOR FURTHER INFORMATION CONTACT: Patricia Tran, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1503.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2016, based on a timely request for review by M&B Metal Products Company, Inc. (Petitioner),[1] the Department published in the **Federal Register** a notice of initiation of an administrative review of the countervailing duty order on steel wire garment hangers from Vietnam covering the period January 1, 2015 through December 31, 2015.[2] The review covers 68 companies. On April 27, 2016, Petitioner withdrew their request for an administrative review on all 68 companies listed in the *Initiation Notice.*[3] No other party requested a review of these producers and/or exporters of subject merchandise.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the if the party that requested the review withdraws its request within 90 days of the publication of the notice of initiation of the requested review. In this case, Petitioner timely withdrew their request by the 90-day deadline, and no other party requested an administrative review of the countervailing duty order. As a result, pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of the countervailing duty order on steel wire garment hangers from Vietnam for the period January 1, 2015, through December 31, 2015, in its entirety.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Because the Department is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed countervailing duties at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business

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[1] *See* Letter from M&B Metal Products Company, Inc., "Steel Wire Garment Hangers from Vietnam: Request for Third Administrative Review," (February 10, 2016).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 20324 (April 7, 2016) (*Initiation Notice*).

[3] *See* Letter from Petitioner, "Third Administrative Review of Steel Wire Garment Hangers from Vietnam—Petitioner's Withdrawal of Review Request," (April 27, 2016).

proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 5, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–11120 Filed 5–10–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; NIST Associates Information System

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 11, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Mary Clague, 301–975–4188, *mary.clague@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NIST Associates (NA) will include guest researchers, research associates, contractors, and other non-NIST employees that require access to NIST campuses or NIST resources. The NIST Associates Information System (NAIS) information collection instrument(s) are completed by the incoming NAs. The NAs will be requested to provide personal identifying data including home address, date and place of birth, employer name and address, and basic security information. The data provided by the collection instruments will be input into NAIS, which automatically populates the appropriate forms, and is routed through the approval process. NIST's Office of Security receives security forms through the NAIS process and is able to allow preliminary access to NAs to the NIST campuses or resources. The data collected will also be the basis for further security investigations as necessary.

II. Method of Collection

The information is collected in paper format.

III. Data

OMB Control Number: 0693–0067.

Form Number(s): None.

Type of Review: Extension of a current information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 2,000.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–11009 Filed 5–10–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE616

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Northeast Trawl Advisory Panel (NTAP) will hold a meeting.

DATES: The meeting will be held on Wednesday, June 1, 2016, from 9 a.m. to 5 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will at the Hilton Garden Inn Boston Logan, 100 Boardman Street, Boston, MA 02128; telephone: 617–567–6789.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION:

Agenda

The NTAP is a joint advisory panel of the Mid-Atlantic and New England Fishery Management Council. It is composed of Council members, fishing industry, academic, and government and non-government fisheries experts who will provide advice and direction on the conduct of trawl research. The NTAP was established to bring commercial fishing, fisheries science, and fishery management professionals in the northeastern U.S. together to identify concerns about regional research survey performance and data, to identify methods to address or mitigate these concerns, and to promote mutual understanding and acceptance of the results of this work among their peers and in the broader community.

Topics to be discussed at the meeting include review of recent NEFSC bottom trawl survey analyses, NEFSC bottom trawl survey re-stratification efforts, and NEFSC gear efficiency work; develop recommended actions by the NTAP; and discussion of the use of currently contracted NEFSC vessel time and methods to supplement NEFSC surveys, potential new surveys, and other NTAP recommendations and actions.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 6, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11068 Filed 5–10–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE594

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet May 31, 2016.

DATES: The meeting will be held on Tuesday, May 31, 2016, from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Bering Sea Crabbers' office 4005 20th Ave. W, Suite 102, Seattle, WA 98188. Teleconference line is 1–800–920–7487, passcode is 88696426#.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Diana Stram, Council staff; telephone: (907) 271–2809, or Lance Farr, Committee Chair (206) 669–7163.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday May 31, 2016

The Committee will review the Bering Sea Aleutian Island Crab 10-year review.

The Agenda is subject to change, and the latest version will be posted at *http://www.npfmc.org/.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shannon Gleason at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: May 6, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–11081 Filed 5–10–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 160331306–6306–01]

RIN 0660–XC024

The Benefits, Challenges, and Potential Roles for the Government in Fostering the Advancement of the Internet of Things

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; extension of comment period.

SUMMARY: On April 6, 2016, the National Telecommunications and Information Administration (NTIA) issued a notice and request for public comments to initiate an inquiry to review the current technological and policy landscape for the Internet of Things (IoT). In response to requests for additional time in which to comment, NTIA through this notice extends the closing deadline for submitting comments.

DATES: Comments are due on Thursday, June 2, 2016, by 5 p.m. Eastern Daylight Time.

ADDRESSES: Written comments may be submitted by email to *iotrfc2016@ntia.doc.gov.* Comments submitted by email should be machine-searchable and should not be copy-protected. Written comments also may be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Attn: IoT RFC 2016, Washington, DC 20230. Responders should include the name of the person or organization filing the comment, as well as a page number, on each page of their submissions. All comments received are a part of the public record and will generally be posted to *https://www.ntia.doc.gov/category/internet-policy-task-force* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NTIA will also accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Travis Hall, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; Telephone: (202) 482–3522; Email: *thall@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs: (202) 482–7002.

SUPPLEMENTARY INFORMATION: As part of the Commerce Department's Digital Economy Agenda, NTIA has initiated an inquiry to review the current technological and policy landscape for IoT. NTIA seeks input from all interested stakeholders—including the private industry, researchers, academia, and civil society—on the potential benefits and challenges of these technologies and what role, if any, the U.S. Government should play in this area.[1]

After analyzing the comments, the Department intends to issue a "green paper" that identifies key issues impacting deployment of these technologies, highlights potential benefits and challenges, and identifies possible roles for the federal government to partner with the private sector to in foster the advancement of IoT technologies.

The original deadline for submission of comments was May 23, 2016. With this notice, NTIA announces that the closing deadline for submission of comments has been extended until June 2, 2016, at 5 p.m. Eastern Daylight Time.

Dated: May 6, 2016.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2016–11124 Filed 5–10–16; 8:45 am]

BILLING CODE 3510–60–P

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[1] *See* NTIA, Notice, Request for public comments, *The Benefits, Challenges, and Potential Roles for the Government in Fostering the Advancement of the Internet of Things,* 81 FR 19956 (April 6, 2016), *available at https://www.ntia.doc.gov/files/ntia/publications/fr_rfc_iot_04062016.pdf.*

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0052]

Agency Information Collection Activities; Comment Request; Program for International Student Assessment (PISA 2018) Recruitment and Field Test

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 11, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0052. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at *kashka.kubzdela@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Program for International Student Assessment (PISA 2018) Recruitment and Field Test.

OMB Control Number: 1850–0755.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 14,792.

Total Estimated Number of Annual Burden Hours: 9,075.

Abstract: The Program for International Student Assessments (PISA) is an international assessment of 15-year-olds which focuses on assessing students' reading, mathematics, and science literacy. PISA was first administered in 2000 and is conducted every three years. The United States has participated in all of the previous cycles, and will participate in 2018 in order to track trends and to compare the performance of U.S. students with that of students in other education systems. PISA 2018 is sponsored by the Organization for Economic Cooperation and Development (OECD). In the United States, PISA is conducted by the National Center for Education Statistics (NCES), within the U.S. Department of Education. In each administration of PISA, one of the subject areas (reading, mathematics, or science literacy) is the major domain and has the broadest content coverage, while the other two subjects are the minor domains. PISA emphasizes functional skills that students have acquired as they near the end of mandatory schooling (aged 15 years), and students' knowledge and skills gained both in and out of school environments. PISA 2018 will focus on reading literacy as the major domain. Mathematics and science literacy will also be assessed as minor domains, with additional assessments of global competence and financial literacy. In addition to the cognitive assessments described above, PISA 2018 will include questionnaires administered to assessed students, school principals, and teachers. To prepare for the main study in 2018, NCES will conduct a PISA field test from April-May 2017 to evaluate newly developed assessment and questionnaire items, to test the assessment operations, and to test school recruitment, data collection, and data management procedures. The PISA main study will be conducted in the U.S. from September-November 2018. This submission requests approval for: recruitment and pre-assessment activities for the 2017 field test sample; administration of the field test; and recruitment of schools for the 2018 main study sample.

Dated: May 6, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–11037 Filed 5–10–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Electricity Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92– 463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: The meeting dates are:
Wednesday, June 1, 2016 (12:00 p.m.—5:45 p.m. EST)
Thursday, June 2, 2016 (8:00 a.m.—12:40 p.m. EST)

ADDRESSES: The meeting will be held at the National Rural Electric Cooperative Association, 4301 Wilson Blvd., Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Matthew Rosenbaum, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 8G–017, 1000 Independence Avenue SW., Washington, DC 20585; Telephone: (202) 586–1060 or Email: *matthew.rosenbaum@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Electricity Advisory Committee (EAC) was re-established in July 2010, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2, to provide advice to the U.S. Department of Energy (DOE) in implementing the Energy Policy Act of

2005, executing the Energy Independence and Security Act of 2007, and modernizing the nation's electricity delivery infrastructure. The EAC is composed of individuals of diverse background selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to electricity.

Tentative Agenda: The meeting of the EAC is expected to include an update on the programs and initiatives of the DOE's Office of Electricity Delivery and Energy Reliability and an overview of DOE grid modeling efforts. The meeting is also expected to include a DOE presentation on the EV Everywhere Challenge, a presentation on the National Academies of Sciences, Engineering, and Medicine's report, "Analytic Research Foundations for the Next-Generation Electric Grid," and panel discussions on transactive energy and the storage market environment. Additionally, the meeting is expected to include a discussion of the plans and activities of the Smart Grid Subcommittee, Power Delivery Subcommittee, Energy Storage Subcommittee, and the Clean Power Plan Working Group.

Tentative Agenda: June 1, 2016

12:00 p.m.–1:00 p.m. EAC Leadership Committee Meeting
12:00 p.m.–1:00 p.m. Registration
1:00 p.m.–1:20 p.m. Welcome, Introductions, Developments since the March 2016 Meeting
1:20 p.m.–1:40 p.m. Update on the DOE Office of Electricity Delivery and Energy Reliability's Programs and Initiatives
1:40 p.m.–2:10 p.m. DOE Presentation, EV Everywhere Challenge
2:10 p.m.–2:40 p.m. Presentation on NAE Report: Analytic Research Foundations for the Next-Generation Electric Grid
2:40 p.m.–3:25 p.m. Overview of DOE Grid Modeling Efforts and Memorandum of Understanding
3:25 p.m.–3:40 p.m. Break
3:40 p.m.–5:25 p.m. Panel: Transactive Energy
5:25 p.m.–5:45 p.m. Wrap-up and Adjourn Day One of June 2016 Meeting of the EAC

Tentative Agenda: June 2, 2016

8:00 a.m.–8:40 a.m. EAC Smart Grid Subcommittee Activities and Plans
8:40 a.m.–9:10 a.m. EAC Power Delivery Subcommittee Activities and Plans
9:10 a.m.–9:50 a.m. EAC Energy Storage Subcommittee Activities and Plans
9:50 a.m.–10:05 a.m. Break
10:05 a.m.–11:40 a.m. Panel: Storage Market Environment: Reports from Experts in the Field
11:40 a.m.–12:00 p.m. EAC Member Discussion of Clean Power Plan Working Group Activities and Plans
12:00 p.m.–12:10 p.m. Public Comments
12:10 p.m.–12:40 p.m. Wrap-up and Adjourn June 2016 Meeting of the EAC

The meeting agenda may change to accommodate EAC business. For EAC agenda updates, see the EAC Web site at: *http://energy.gov/oe/services/electricity-advisory-committee-eac.*

Public Participation: The EAC welcomes the attendance of the public at its meetings. Individuals who wish to offer public comments at the EAC meeting may do so on Thursday, June 1, 2016, but must register at the registration table in advance. Approximately 10 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the EAC, is invited to send a written statement to Mr. Matthew Rosenbaum.

You may submit comments, identified by "Electricity Advisory Committee Open Meeting," by any of the following methods:

- *Mail/Hand Delivery/Courier:* Matthew Rosenbaum, Office of Electricity Delivery and Energy Reliability, U.S. Department of Energy, Forrestal Building, Room 8G–017, 1000 Independence Avenue SW., Washington, DC 20585.
- *Email: matthew.rosenbaum@hq.doe.gov.* Include "Electricity Advisory Committee Open Meeting" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. *Instructions:* All submissions received must include the agency name and identifier. All comments received will be posted without change to *http://energy.gov/oe/services/electricity-advisory-committee-eac,* including any personal information provided.
- *Docket:* For access to the docket, to read background documents or comments received, go to *http://energy.gov/oe/services/electricity-advisory-committee-eac.*

The following electronic file formats are acceptable: Microsoft Word (.doc), Corel Word Perfect (.wpd), Adobe Acrobat (.pdf), Rich Text Format (.rtf), plain text (.txt), Microsoft Excel (.xls), and Microsoft PowerPoint (.ppt). If you submit information that you believe to be exempt by law from public disclosure, you must submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. You must also explain the reasons why you believe the deleted information is exempt from disclosure.

DOE is responsible for the final determination concerning disclosure or nondisclosure of the information and for treating it in accordance with the DOE's Freedom of Information regulations (10 CFR 1004.11).

Note: Delivery of the U.S. Postal Service mail to DOE may be delayed by several weeks due to security screening. DOE, therefore, encourages those wishing to comment to submit comments electronically by email. If comments are submitted by regular mail, the Department requests that they be accompanied by a CD or diskette containing electronic files of the submission.

Minutes: The minutes of the EAC meeting will be posted on the EAC Web page at *http://energy.gov/oe/services/electricity-advisory-committee-eac.* They can also be obtained by contacting Mr. Matthew Rosenbaum at the address above.

Issued in Washington, DC, on May 5, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–11072 Filed 5–10–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Basic Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, June 9, 2016 8:00 a.m. to 5:00 p.m.

Friday, June 10, 2016 9:00 a.m. to 12:00 p.m.

ADDRESSES: Bethesda North Hotel and Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

FOR FURTHER INFORMATION CONTACT: Katie Runkles; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, 1000

Independence Avenue SW., Washington, DC 20585; Telephone: (301) 903–6529

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of this Board is to make recommendation to DOE–SC with respect to the basic energy sciences research program.

Tentative Agenda

- Call to Order, Introductions, Review of the Agenda
- News from the Office of Science
- News from the Office of Basic Energy Sciences
- Report by the BESAC Subcommittee on Facility Upgrade Prioritization
- Scientific User Facilities Division Committee of Visitors Report
- Energy Frontier Research Centers/Hubs Committee of Visitors Update
- Public Comments
- Adjourn

Breaks Taken As Appropriate

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Katie Runkles at 301–903–6594 (fax) or *katie.runkles@science.doe.gov* (email). Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue SW., Washington, DC 20585; between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on May 5, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–11074 Filed 5–10–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Methane Hydrate Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Methane Hydrate Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat.770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, June 8, 2016.

8:30 a.m. to 9:00 a.m. (EDT)—Registration

9:00 a.m. to 4:30 p.m. (EDT)—Meeting

ADDRESSES: U.S. Department of Energy, Forrestal Building, Room 3E–069, 1000 Independence Ave. SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Lou Capitanio, U.S. Department of Energy, Office of Oil and Natural Gas, 1000 Independence Avenue SW., Washington, DC 20585. *Phone:* (202) 586–5098.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy, and assist in developing recommendations and priorities for the Department of Energy's Methane Hydrate Research and Development Program.

Tentative Agenda: The agenda will include: Welcome and Introduction by the Designated Federal Officer; Committee Business including election of Committee Chair; Review of Secretary's Energy Advisory Board Report on the Methane Hydrate Program; Update on International Activity; FY 2016 Methane Hydrate Program Activities and Plans; Methane Hydrate Program Budget; Methane Hydrate Program Strategic Direction; Advisory Committee Discussion; and Public Comments, if any.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chair of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Lou Capitanio at the phone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the three-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the following Web site: *http://energy.gov/fe/services/advisory-committees/methane-hydrate-advisory-committee.*

Issued at Washington, DC, on May 5, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–11071 Filed 5–10–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The EIA has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Petroleum Supply Reporting System, OMB Control Number 1905–0165. The proposed collection will produce data used in statistical analytical reports as well as forecasts produced by the U.S. Energy Information Administration. Reports and forecasts are essential to accomplish the agency's mission to promote sound policy making, efficient markets, and public understanding of energy and its interactions with the economy and the environment. Users of the data include government officials, industry and financial analysts, and the public. EIA proposes one change to Form EIA–812, Form EIA–813, and Form EIA–803 and no other changes to:

- Form EIA–22M, "Monthly Biodiesel Production Survey"
- Form EIA–800, "Weekly Refinery and Fractionator Report"
- Form EIA–802, "Weekly Product Pipeline Report"
- Form EIA–803, "Weekly Crude Oil Stocks Report"
- Form EIA–804, "Weekly Imports Report"
- Form EIA–805, "Weekly Bulk Terminal and Blender Report"
- Form EIA–809, "Weekly Oxygenate Report"
- Form EIA–810, "Monthly Refinery Report"
- Form EIA–812, "Monthly Product Pipeline Report" (proposed change)
- Form EIA–813, "Monthly Crude Oil Report"
- Form EIA–814, "Monthly Imports Report"
- Form EIA–815, "Monthly Bulk Terminal and Blender Report"
- Form EIA–816, "Monthly Natural Gas Plant Liquids Report"

- Form EIA–817, "Monthly Tanker and Barge Movement Report"
- Form EIA–819, "Monthly Oxygenate Report"
- Form EIA–820, "Annual Refinery Report."

EIA proposes to discontinue biannually collecting information on Form EIA–812 on petroleum product tank storage capacity and related biannual separate reporting of stocks held in those tanks and to discontinue collection of crude oil lease stocks on Form EIA–813 and Form EIA–803. EIA currently uses Parts 5, 6, and 7 of Form EIA–812 to collect petroleum product storage capacity and related stock data in those tanks from pipeline companies twice a year (as of March 31 and September 30). Collecting biannual tank storage capacity and related stocks in those tanks by product pipelines did not provide useful information for assessing available petroleum supplies. Product pipeline inventories held in tanks are used for operational purposes, not commercial purposes. EIA will still collect pipeline linefill stocks along with stocks and biannual storage capacity data for petroleum products held at terminals and refineries. Discontinuing the biannual collection of storage capacity and related tank stocks on Form EIA–812 will eliminate confusion in analyzing storage capacity utilization, stock levels, improve the quality of petroleum storage data and reduce reporting burden on this form.

EIA will discontinue collecting lease inventories on Form EIA–813, "Monthly Crude Oil Report" and Form EIA–803, "Weekly Crude Oil Stocks Report." Lease inventories are inventories stored at crude oil production sites. The purpose of stocks held on oil and gas producing leases (lease stocks) is to facilitate oil and gas production operations. Lease stocks are typically held only long enough for oil to be picked up by trucks or otherwise removed from production sites. While the total number of barrels held as lease stocks is significant, the barrels are widely dispersed at producing sites with only small quantities at any given location. For these reasons, we have determined that continued tracking of lease stocks on Form EIA–803 and Form EIA–813 has limited value for assessment of crude oil supplies available to markets. In addition, our research has shown that some or all of the barrels reported by respondents as lease stocks are actually outside of the U.S. and regional crude oil balances developed by EIA. This affects estimates that are calculated to assess supply because barrels may be recorded as crude oil production, which is the first supply component of our balance, only after the barrels are withdrawn from lease stocks. EIA will create and publish historical data series of crude oil stocks excluding lease stocks in order to meet analyst requirements for crude oil inventory data that are consistent over time.

DATES: Comments regarding this proposed information collection must be received on or before June 10, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503, and to Robert Meriam, *robert.merriam@eia.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Merriam, 1000 Independence Ave. SW., Washington, DC 20585. The forms and instructions are available on EIA's Web site at: *http://www.eia.gov/survey/*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1905–0165; (2) Information Collection Request Title: Petroleum Supply Reporting System; (3) Type of Request: Three year extension; (4) Purpose: The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands and to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA.

The weekly petroleum supply surveys (Forms EIA–800, EIA–802, EIA–803, EIA–804, EIA–805 and EIA–809) are designed to provide an early, initial estimate of weekly petroleum refinery and fractionator operations, inventory levels, and imports of selected petroleum products in a timely manner. The information appears in the publications listed below and is also available electronically on EIA's Web site at *http://www.eia.doe.gov/*.

Publications: Internet only publications are the Weekly Petroleum Status Report (*http://www.eia.gov/petroleum/supply/weekly/*), Short-Term Energy Outlook (*http://www.eia.gov/forecasts/steo/*), and This Week in Petroleum (*http://www.eia.gov/petroleum/weekly/*).

The monthly petroleum supply surveys (Forms EIA–22M, EIA–810, EIA–812, EIA–813, EIA–814, EIA–815, EIA–816, EIA–817, and EIA–819) are designed to provide statistically reliable and comprehensive monthly information to EIA, other Federal agencies, and the private sector for use in forecasting, policy making, planning, and analysis activities. The information appears in the publications listed below and is also available electronically on EIA's Web site at *http://www.eia.doe.gov/*.

Publications: Internet only publications are the Petroleum Supply Monthly (*http://www.eia.gov/petroleum/supply/monthly/*), Company-Level Imports (*http://www.eia.gov/petroleum/imports/companylevel/*), the Petroleum Supply Annual, Volume 1 (*http://www.eia.gov/petroleum/supply/annual/volume1/*), the Annual Energy Outlook (*http://www.eia.gov/forecasts/aeo/index.cfm*); and the Monthly Biodiesel Production Report (*http://www.eia.gov/biofuels/biodiesel/production/*).

The annual refinery survey (Form EIA–820) provides data on refinery capacities, fuels consumed, natural gas consumed as hydrogen feedstock, and crude oil receipts by method of transportation, for operating and idle petroleum refineries (including new refineries under construction), and refineries shutdown during the previous year. The information appears in the Refinery Capacity Report (*http://www.eia.gov/petroleum/refinerycapacity/*) and the Refinery Outage Report (*http://www.eia.gov/petroleum/refinery/outage/*).

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section. (5) Annual Estimated Number of Respondents: 4,472; (6) Annual Estimated Number of Total Responses: 101,833; (7) Annual Estimated Number of Burden Hours: 211,257; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $6,100,000. The cost of the burden hours is estimated to be $15,214,729 (211,257 burden hours times $72.02 per hour). Other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on May 5, 2016.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2016–11070 Filed 5–10–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1021–001.
Applicants: Arizona Public Service Company.
Description: Compliance filing: Service Agreement Nos. 338 and 339 to be effective 2/10/2016.
Filed Date: 5/5/16.
Accession Number: 20160505–5190.
Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1397–001.
Applicants: Southern California Edison Company.
Description: Tariff Amendment: Resubmit Two Amended DSA's w/ SunEdison Utility Solutions, LLC to be effective 1/1/2016.
Filed Date: 5/5/16.
Accession Number: 20160505–5158.
Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1454–001.
Applicants: Southern California Edison Company.
Description: Tariff Amendment: Resubmit Amended DSA w/SCE's Power Production Department to be effective 1/1/2016.

Filed Date: 5/5/16.

Accession Number: 20160505–5162.

Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1625–000.

Applicants: AEP Texas Central Company.

Description: Section 205(d) Rate Filing: TCC-Rio Grande EC IA First Amended and Restated to be effective 4/13/2016.

Filed Date: 5/5/16.

Accession Number: 20160505–5141.

Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1626–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Service Agreement Nos. 4451, Queue Position AA1–063A to be effective 4/5/2016.

Filed Date: 5/5/16.

Accession Number: 20160505–5171.

Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1627–000.

Applicants: New York Independent System Operator, Inc.

Description: Section 205(d) Rate Filing: 205—Rules to Allocate Responsibility for the Cost of New Interconnection to be effective 7/5/2016.

Filed Date: 5/5/16.

Accession Number: 20160505–5189.

Comments Due: 5 p.m. ET 5/26/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11111 Filed 5–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2768–010]

The City of Holyoke Gas & Electric Department; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. Type of Filing: Notice of Intent To File License Application and Request To Use the Traditional Licensing Process.

b. Project No.: 2768–010.

c. Date Filed: February 29, 2016.

d. Submitted By: City of Holyoke Gas & Electric Department.

e. Name of Project: Albion Mill (A Wheel) Hydroelectric Project.

f. Location: Between the first and second level canals on the Holyoke Canal System adjacent to the Connecticut River, in the city of Holyoke in Hampden County, Massachusetts. The project does not occupy federal land.

g. Filed Pursuant to: 18 CFR 5.3 of the Commission's regulations.

h. Potential Applicant Contact: Paul Ducheney, Superintendent, Holyoke Gas & Electric, 99 Suffolk Street, Holyoke, MA 01040; (413) 536–9340; email—*ducheney@hged.com.*

i. FERC Contact: Matt Buhyoff at (202) 502–6824; or email at *matt.buhyoff@ferc.gov.*

j. Holyoke Gas and Electric filed its request to use the Traditional Licensing Process on February 29, 2016. Holyoke Gas and Electric provided public notice of its request on February 26, 2016. In a letter dated April 29, 2016, the Director of the Division of Hydropower Licensing approved Holyoke Gas and Electric's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Massachusetts State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Holyoke Gas and Electric as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Holyoke Gas & Electric filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2768. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2019.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: April 29, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–11013 Filed 5–10–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–114–000.
Applicants: Parrey, LLC.
Description: Application of Parrey, LLC for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action, Confidential Treatment, and Waivers.
Filed Date: 5/3/16.
Accession Number: 20160503–5201.
Comments Due: 5 p.m. ET 5/24/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–432–004.
Applicants: Entergy Services, Inc.
Description: Compliance Filing of Entergy Services, Inc. Pursuant to Opinion No. 547.
Filed Date: 5/3/16.
Accession Number: 20160503–5207.
Comments Due: 5 p.m. ET 5/24/16.

Docket Numbers: ER15–1218–003; ER15–2224–002; ER16–1154–002.
Applicants: Solar Star California XIII, LLC, Solar Star Colorado III, LLC, Parrey, LLC.
Description: Notice of Non-Material of Change in Status of Solar Star California XIII, LLC, et al.
Filed Date: 5/2/16.
Accession Number: 20160502–5498.
Comments Due: 5 p.m. ET 5/23/16.

Docket Numbers: ER16–1621–000.
Applicants: Public Service Company of Colorado.
Description: Compliance filing: SPS Line Loss Percentages Compliance filing to be effective 5/1/2016.
Filed Date: 5/5/16.
Accession Number: 20160505–5101.
Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1622–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: 2016 Revised Added Facilities Rate under WDAT—Filing No. 11 to be effective 1/1/2016.
Filed Date: 5/5/16.
Accession Number: 20160505–5104.
Comments Due: 5 p.m. ET 5/26/16.

Docket Numbers: ER16–1623–000.
Applicants: New York State Electric & Gas Corporation.
Description: Notice of Termination of Interconnection Agreement of New York State Electric & Gas Corporation.
Filed Date: 5/4/16.
Accession Number: 20160504–5203.
Comments Due: 5 p.m. ET 5/25/16.

Docket Numbers: ER16–1624–000.
Applicants: PacifiCorp.
Description: Section 205(d) Rate Filing: Tri-State E&P Agreement ? Monolith Tap to be effective 4/22/2016.
Filed Date: 5/5/16.
Accession Number: 20160505–5130.
Comments Due: 5 p.m. ET 5/26/16.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM16–1–000.
Applicants: Nebraska Public Power District.
Description: Supplemental Response to April 19, 2016 Deficiency Letter on behalf of the Nebraska Public Power District.
Filed Date: 5/3/16.
Accession Number: 20160503–5199.
Comments Due: 5 p.m. ET 5/31/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 5, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–11110 Filed 5–10–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2016–0250; FRL 9946–28–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), notice is hereby given of a proposed consent decree to address a lawsuit filed by Midwest Environmental Defense Center, Inc. (MEDC or Plaintiff), in the United States District Court for the Eastern District of Wisconsin: Midwest Environmental Defense Center v. McCarthy, Civil Action No. 1:15–cv–1511 (E.D. Wis.). On December 17, 2015, Plaintiff filed a complaint alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA"), failed to

perform a nondiscretionary duty to grant or deny within 60 days a petition submitted by Plaintiff on October 28, 2013, requesting that EPA object to a CAA Title V permit issued by the Wisconsin Department of Natural Resources ("WDNR"), to Appleton Coated, LLC, authorizing the operation of its facility located in Combined Locks, Wisconsin. The proposed consent decree would establish a deadline for EPA to take such action.

DATES: Written comments on the proposed consent decree must be received by June 10, 2016.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2016–0250, online at *http://www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Dan Conrad, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–0903; fax number (202) 564–5603; email address: *conrad.daniel@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by the Plaintiff seeking to compel the Administrator to take actions under CAA section 505(b)(2). Under the terms of the proposed consent decree, EPA would agree to sign its response granting or denying the petition filed by Plaintiff regarding the Appleton Coated, LLC facility located in Combined Locks, Wisconsin pursuant to section 505(b)(2) of the CAA, on or before October 14, 2016.

Under the terms of the proposed consent decree, EPA would expeditiously deliver notice of EPA's response to the Office of the Federal Register for review and publication following signature of such response. In addition, the proposed consent decree outlines the settlement in regard to Plaintiff's attorney fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2016–0250) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search."

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an "anonymous access" system. If you send an email comment directly to the Docket without going through *http://www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: May 3, 2016.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2016–11126 Filed 5–10–16; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9946–25–OAR]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee (MSTRS) will meet on June 16, 2016. The MSTRS is a subcommittee under the Clean Air Act Advisory Committee. This is an open meeting. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. The preliminary agenda for the meeting and any notices about change in venue will be posted on the Subcommittee's Web site: *http://www2.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac.* MSTRS listserv subscribers will receive notification when the agenda is available on the Subcommittee Web site. To subscribe to the MSTRS listserv, send an email to *mccubbin.courtney@epa.gov.*

DATES: Thursday, June 16, 2016 from 9:00 a.m. to 5:00 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting is currently scheduled to be held at the EPA's National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood Drive, Ann Arbor, MI 48105. However, this date and location are subject to change and interested parties should monitor the Subcommittee Web site (above) for the latest logistical information.

FOR FURTHER INFORMATION CONTACT: Courtney McCubbin, Designated Federal Officer, Transportation and Climate Division, Mailcode 6406A, U.S. EPA, 1200 Pennsylvania Ave. NW., Washington, DC 20460; Ph: 202–564–2436; email: *mccubbin.courtney@epa.gov.* Background on the work of the Subcommittee is available at: *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac.* Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Ms. McCubbin at the address above by June 2, 2016. The Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

For Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Ms. McCubbin (see above). To request accommodation of a disability, please contact Ms. McCubbin, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 5, 2016.

Christopher Grundler,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2016–11127 Filed 5–10–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9946–21–ORD]

Webinar Workshop To Review Initial Draft Materials for the Particulate Matter (PM) Integrated Science Assessment (ISA) for Health and Welfare Effects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of workshop.

SUMMARY: As part of the review of the air quality criteria for the particulate matter (PM) primary (health-based) and secondary (welfare-based) National Ambient Air Quality Standards (NAAQS), EPA is announcing a webinar workshop to evaluate initial draft materials for the PM Integrated Science Assessment (ISA) for health and welfare effects, which is being organized by EPA's National Center for Environmental Assessment (NCEA) within the Office of Research and Development. The workshop will be held over four days: June 9th, 13th, 20th, and 22nd, 2016. The workshop will be open to webinar attendance by interested public observers on a first-come, first-served basis.

DATES: The workshop will be held on Thursday, June 9, 2016, beginning at 11:30 a.m. and ending at 3:30 p.m.; Monday, June 13, 2016, beginning at 11:30 a.m. and ending at 1:30 p.m.; Monday, June 20, 2016, beginning at 11:30 a.m. and ending at 1:45 p.m.; and Wednesday, June 22, 2016, beginning at 11:30 a.m. and ending at 3:00 p.m.

ADDRESSES: The workshop will be held by teleconference and webinar. The call in number and Web site information for the webinar are available to registered participants. Please register by going to *http://pm-isa-peerinput-webinars.eventbrite.com.*

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding workshop registration or logistics to Canden Byrd at *EPA_NAAQS_Workshop@icfi.com* or by phone at 919–293–1660. Questions regarding the scientific and technical aspects of the workshop should be directed to Mr. Jason Sacks; telephone: 919–541–9729; facsimile: 919–541–1818; email: *sacks.jason@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Workshop

Section 109(d) of the Clean Air Act (CAA) requires the U.S. EPA to conduct periodic reviews of the air quality criteria for each air pollutant listed under section 108 of the Act. Based on such review, EPA is to retain or revise the NAAQS for a given pollutant as appropriate. As part of these reviews, NCEA assesses newly available scientific information and develops ISA documents that provide the scientific basis for the reviews of the NAAQS.

NCEA is holding this webinar workshop to inform EPA's evaluation of the scientific evidence for the review of the primary and secondary NAAQS for PM. Section 109(b)(1) of the CAA defines primary NAAQS as standards "the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health." A secondary standard, as defined in section 109(b)(2) of the CAA, must "specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air." The purpose of the webinar workshop is to discuss the scientific content of the initial draft written materials prepared for the PM ISA for health and welfare effects, to help ensure that the ISA is up-to-date and focuses on the key evidence to inform the scientific understanding for the review of the primary and secondary NAAQS for PM. Workshop sessions will include a discussion of preliminary draft written materials on the atmospheric chemistry of and human exposure to PM; welfare effects of PM; modes of action and dosimetry of PM, and the relationship between PM and cancer; and the health effects evidence from animal toxicology, human clinical, and epidemiology studies. In addition, roundtable discussions will help identify key studies or concepts within each discipline to assist EPA in integrating relevant literature within and across disciplines. These preliminary materials are not being released as an external draft, but will be used to guide workshop discussions. EPA is planning to release the first external review draft PM ISA for health and welfare effects for review by the Clean Air Scientific Advisory Committee and the public in 2017.

II. Workshop Information

Members of the public may attend the webinar as observers. Space in the webinar may be limited, and reservations will be accepted on a first-come, first-served basis. Registration for the workshop is available online at *http://pm-isa-peerinput-webinars.eventbrite.com.*

Dated: May 3, 2016.

Mary A. Ross,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2016–11122 Filed 5–10–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0856]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before June 10, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0856.

Title: Universal Service—Schools and Libraries Universal Service. Program Reimbursement Forms.

Form Number(s): FCC Forms 472, 473 and 474.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, and state, local, or tribal government.

Number of Respondents and Responses: 24,700 respondents; 168,900 responses.

Estimated Time per Response: 1 hour per form.

Frequency of Response: On occasion, annual reporting requirement, and recordkeeping requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 1, 4(i), 4(j), 201–205, 214, 254, 312(d), 312(f), 403, and 503(b) of the Communications Act of 1934, as amended.

Total Annual Burden: 168,900 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission does not request that respondents submit confidential information to the Commission. If the Commission requests applicants to submit information that the respondents believe is confidential, respondents may request confidential treatment under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission seeks to revise OMB 3060–0856 to conform this information collection to changes implemented in the Report and Order and Further Notice of Proposed Rulemaking (*E-Rate Modernization Order*) (WC Docket No. 13–184, FCC 14–99, 79 FR 49160, August 19, 2014).

Collection of the information on FCC Form 472 is necessary to establish the process and procedure for an eligible applicant to seek reimbursement from the E-rate program for the discounts on services paid in full to a service provider. The Universal Service Administrative Company (USAC) reviews the information collected on FCC Form 472, along with invoices from the service provider, to verify the eligibility of the services for E-rate support, approve the amount that should be reimbursed, ensure that each service provider has provided discounted services within the current funding year for which it submits an invoice to USAC, and confirm that invoices submitted from service providers for the costs of discounted eligible services do not exceed the amount that has been approved.

Collection of information on FCC Form 473 is necessary to establish that the participating service provider is eligible to participate in the E-rate program, confirm that the invoice forms submitted by the service provide are in compliance with the Federal Communications Commission's E-rate rules, and enable the service provider to certify its compliance with the E-rate rules. The FCC Form 473 is also used by USAC to assure that the dollars paid out by the universal service fund go to eligible providers.

Collection of information on FCC Form 474 is necessary to establish the process and procedure for a service provider to seek payment for the discounted costs of services it provided to billed entities for eligible services. After receiving an invoice from the service provider, together with an FCC Form 474, USAC is able to verify that the eligible and approved amounts can be paid. The FCC Form 474 is also used to ensure that each service provider has provided discounted services within the current funding year for which it submits an invoice to USAC and that invoices submitted from service providers for the costs of discounted eligible services do not exceed the amount that has been approved.

This information collection is being revised pursuant to program and rule changes in the *E-Rate Modernization Order* that require the collection of information necessary to allow USAC to make direct payments to applicants, and add service provider certifications to the FCC Form 473, the Service Provider Annual Certification Form. The information collection is also being revised to accommodate USAC's new online portal and the *E-Rate Modernization Order* requirement that the forms in this collection be filed electronically.

All of the requirements contained in this information collection are necessary for the Commission to ensure compliance by applicants and/or vendors with the requirement of the E-rate program, to protect the program from waste, fraud and abuse and to evaluate the extent to which the E-rate program is meeting the statutory objectives specified in section 254(h) of the 1996 Act, and the Commission's own performance goals established in the *E-Rate Modernization Order*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–11015 Filed 5–10–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0775]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before June 10, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0775.

Title: Section 64.1903, Obligations of Independent Incumbent Local Exchange Carriers (LECs) Subject to Rate of Return Regulation.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 255 respondents; 255 responses.

Estimated Time per Response: 500 hours–6,056 hours.

Frequency of Response: Recordkeeping requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in *47 U.S.C. 151, 152, 154, 201, 202, 251, 271, 272,* and *303(r)* of the Communications Act of 1934, as amended.

Total Annual Burden: 155,280 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this collection to the Office of Management and Budget (OMB) for approval of an extension of an existing collection in order to obtain the three year clearance from them.

The Commission imposed recordkeeping requirements on independent local exchange carriers (LECs). Independent incumbent LECs wishing to offer international, interexchange services must comply with the requirements of the Competitive Carrier Fifth Report and

Order, CC Docket Nos. 96–149, 96–61 and 00–175. One of the requirements is that the independent incumbent LEC's international, interexchange affiliate (for facilities-based providers of international, interexchange services) must maintain books of account separate from such LEC's local exchange and other activities. See *47 CFR 64.1903* for the specific recordkeeping requirements. In May of 2013, the Commission granted, in part, a petition for forbearance from the separate affiliate requirement, 47 CFR 64.1903, for independent incumbent local exchange carriers (LECs) that are subject to price cap regulation and adopted a Second Further Notice of Proposed Rulemaking to consider modifying or eliminating the separate affiliate requirement for independent incumbent LECs that are subject to rate-of-return regulation, *see Petition of USTelecom for Forbearance Under* 47 U.S.C. 160(C) From Enforcement of Certain Legacy Telecommunications Regulations, 28 FCC Rcd. 7627 (2013). Accordingly, there has been a change to recordkeeping requirement and the Commission's previous burden estimates.

This recordkeeping requirement is used by the Commission to ensure that independent incumbent LECs that provide international, interexchange services do so in compliance with the Communications Act, as amended, and with Commission policies and regulations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–10996 Filed 5–10–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0084]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 11, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0084.

Title: Ownership Report for Noncommercial Educational Broadcast Station, FCC Form 323–E.

Form Number: FCC Form 323–E.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents and Responses: 1,500 respondents; 1,500 responses.

Estimated Time per Response: One hour.

Frequency of Response: On occasion, biennially, and on renewal reporting requirements.

Total Annual Burden: 1,500 hours.

Total Annual Cost: $900,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in sections 154(i), 308 and 310 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: Each licensee/permittee of a noncommercial FM and TV broadcast station is required to file an Ownership Report for Noncommercial Educational Broadcast Station, FCC Form 323–E, within 30 days of the date of grant by the FCC of an application for an original construction permit. In addition, licensee must file FCC Form 323–E biennially on the anniversary of the application filing date for the station license renewal. Each licensee with a current, unmodified FCC Form 323–E on file with the Commission may electronically review its current Report, validate its accuracy, and be relieved of the obligation to file a new Biennial Ownership Report. The FCC 323–E must also be filed within 30 days of consummating authorized assignments or transfers of permits and licenses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2016–11016 Filed 5–10–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012407.

Title: COSCON/WHL Slot Charter Agreement Asia—USWC.

Parties: COSCO Container Lines Company, Limited; Wan Hai Lines Ltd.; and Wan Hai Lines (Singapore) PTE Ltd.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 799 9th Street NW., Suite 500; Washington, DC 20001.

Synopsis: The agreement provides for the exchange of slots between COSCON and WHL on their respective services in the trade between the United States West Coast and China (including Hong Kong), Malaysia, Singapore, and Vietnam.

Agreement No.: 012408.

Title: WWL/Grimaldi Euromed SPA Space Charter Agreement.

Parties: Wallenius Wilhelmsen Logistics AS and Grimaldi Euromed SPA.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor LLP; 1200 Nineteenth St. NW.; Washington, DC 200036.

Synopsis: The Agreement authorizes the parties to charter space to/from one another on an "as needed/as available" basis in the trade between ports on the Atlantic Coast of the United States and ports in North Europe and on the Mediterranean Sea.

Agreement No.: 012409.

Title: CMA CGM/COSCON Slot Exchange Agreement Asia—U.S. West Coast.

Parties: CMA CGM S.A. and COSCO Container Lines Company, Limited.

Filing Party: Eric. C. Jeffrey, Esq.; Nixon Peabody LLP; 799 9th Street NW., Suite 500; Washington, DC 20001.

Synopsis: The agreement authorizes the parties to exchange slots on their respective services in the trade between the United States West Coast and the People's Republic of China (including Hong Kong), Singapore, Malaysia, Vietnam, and Canada.

Agreement No.: 201202–009.

Title: Oakland MTO Agreement.

Parties: Everport Terminal Services, Inc.; SSA Terminals, LLC; SSA Terminals (Oakland), LLC; and Trapac, Inc.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 19th Street NW.; Washington, DC 20036.

Synopsis: The amendment deletes Ports America Outer Harbor Terminal, LLC as a party to the Agreement.

By Order of the Federal Maritime Commission.

Dated: May 6, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–11084 Filed 5–10–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MARITIME COMMISSION

[DOCKET NO. 16–11]

Notice of Filing of Complaint and Assignment—Correction

LANDERS BROTHERS AUTO GROUP, INC. D/B/A LANDERS HONDA (JONESBORO), LANDERS BROTHERS AUTO NO. 4, LLC D/B/A/LANDERS HONDA (PINE BLUFF), INDIVIDUALLY AND ON BEHALF OF OTHERS SIMILARLY SITUATED

V.

NIPPON YUSEN KABUSHIKI KAISHA, NYK LINE (NORTH AMERICA) INC., MITSUI O.S.K. LINES, LTD., MITSUI O.S.K. BULK SHIPPING (USA), INC., WORLD LOGISTICS SERVICE (USA) INC., HÖEGH AUTOLINERS AS, HÖEGH AUTOLINERS, INC., NISSAN MOTOR CAR CARRIERS CO. LTD., KAWASAKI KISEN KAISHA, LTD., "K" LINE AMERICA, INC., WALLENIUS WILHELMSEN LOGISTICS AS, WALLENIUS WILHELMSEN LOGISTICS AMERICAS LLC, EUKOR CAR CARRIERS INC., COMPAÑÍA SUD AMERICANA DE VAPORES S.A., AND CSAV AGENCY NORTH AMERICA, LLC

In a Notice of Filing of Complaint and Assignment published on Wednesday, May 4, 2016, 81 FR 26793, the last sentence stated that "[t]he initial decision of the presiding officer in this proceeding shall be issued by April 28, 2017 and the final decision of the Commission shall be issued by November 13, 2017." Due to a clerical error, the date for the initial decision was incorrect. That sentence is corrected to read as follows: "The initial decision of the presiding officer in this proceeding shall be issued by May 12, 2017 and the final decision of the Commission shall be issued by November 13, 2017."

Karen V. Gregory,

Secretary.

[FR Doc. 2016–11019 Filed 5–10–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Notice

May 9, 2016.

TIME AND DATE: 10:00 a.m., Thursday, May 19, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *KenAmerican Resources, Inc.,* Docket No. KENT 2013–0211. (Issues include whether the Judge erred in vacating an alleged violation of a standard which prohibits advanced notice of an inspection.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2016–11202 Filed 5–9–16; 4:15 pm]

BILLING CODE P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

[BAC 6735–01]

Sunshine Act Notice

May 9, 2016.

TIME AND DATE: 10:00 a.m., Wednesday, May 18, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in closed session as a continuation of the meeting held on May 4, 2016: *Secretary of Labor* v. *Newtown Energy, Inc.,* Docket No. WEVA 2011–283 (Issues include whether the Administrative Law Judge erred by concluding that the violation in question was not significant and substantial and was not the result of an unwarrantable failure to comply.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah Stewart,

Deputy General Counsel.

[FR Doc. 2016–11199 Filed 5–9–16; 4:15 pm]

BILLING CODE 6735–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–0822]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

The National Intimate Partner and Sexual Violence Survey (NISVS) (OMB Control No. 0920–0822, expiration date 6/30/2016)—Revision — National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a revision request for the currently approved National Intimate Partner and Sexual Violence Survey (NISVS). OMB approval is requested for three years.

In 2010, NISVS reported that approximately 6.9 million women and 5.6 million men experienced rape, physical violence and/or stalking by an intimate partner within the last year. The health care costs of Intimate Partner Violence (IPV) exceed $5.8 billion each year, nearly $3.9 billion of which is for direct medical and mental health care services.

In order to address this important public health problem, CDC implemented, beginning in 2010, the National Intimate Partner and Sexual Violence Surveillance System that produces national and state level estimates of IPV, Sexual Violence (SV) and stalking on an annual basis. CDC is requesting a continuation of data collection among non-institutionalized adult men and women aged 18 years or older in the United States assessing lifetime experiences of IPV, SV and stalking with a new and improved data collection tool. The revisions to the survey are aimed at reducing the time and complexity of the instrument, thus reducing the burden on the respondent. The simplified structure of the instrument will also reduce the complexity of the data set, making it more assessable for public use. Additionally, in collaboration with the Department of Defense (DoD), NISVS will collect information regarding the experiences of IPV, SV and stalking among active duty women and men in the military and wives of active duty men.

Data collected are used by local, state and national governments and organizations to inform prevention programs and policy making related to intimate partner violence, sexual violence and stalking. This data collection will take place during the first three months of data collection. Data are analyzed using appropriate statistical software to account for the complexity of the survey design to compute weighted counts, percentages, confidence intervals using both national and state level data.

To comply with OMB requirements, CDC is developing an expert panel to address methodological issues with the NISVS survey. The panel will meet multiple times over the course of the next year. The members of this panel will provide guidance on how to improve both survey design (methods, sampling frame, recruitment, mode of administration) and content/question wording with the goals of increasing response rates, reducing non-response bias, and maximizing the opportunities across Federal surveys for covering populations of interest. The survey will be conducted among English or Spanish speaking male and female adults (18 years and older) living in the United States. The estimated annual burden hours are 27,106. There are no extra costs to respondents.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Non-Participating Household (Screened)	NISVS Survey Instrument. First section non-participating.	170,000	1	3/60
Eligible Household (Completes Survey)	NISVS Survey Instrument. Section for participating.	25,000	1	25/60
Non-Participating DoD Household (Screened)	NISVS Survey Instrument. Section for DoD participating.	73,800	1	3/60
Eligible DoD Household (Completes Survey)	NISVS Survey Instrument. Section for participating.	10,800	1	25/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–11036 Filed 5–10–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10261, CMS–10295 and CMS–10463]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are require; to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by *July 11, 2016.*

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10261 Part C Medicare Advantage Reporting Requirements and Supporting Regulations in 42 CFR 422.516(a)

CMS–10295 Reporting Requirements for States Under Transitional Medical Assistance (TMA) Provisions

CMS–10463 Cooperative Agreement To Support Navigators in Federally-Facilitated and State Partnership Exchanges

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Part C Medicare Advantage Reporting Requirements and Supporting Regulations in 42 CFR 422.516(a); *Use:* Medicare Advantage Organizations (MAOs) must have an effective procedure to develop, compile, evaluate, and report to CMS, to its enrollees, and to the general public, at the times and in the manner that CMS requires, and while safeguarding the confidentiality of the doctor-patient relationship, statistics and other information with respect to: the cost of its operations; the patterns of service utilization; the availability, accessibility, and acceptability of its services; to the extent practical, developments in the health status of its enrollees; information demonstrating that the MAO has a fiscally sound operation; and other matters that CMS may require. CMS also has oversight authority over cost plans which includes establishment of reporting requirements. This revision would add five new data elements to the reporting section: Organization Determinations and Reconsiderations. These new data elements are needed to obtain more information about case reopenings. The revision would also suspend the Sponsor Oversight of Agents reporting section beginning 2017 so that the reporting section can be reassessed based on burden and usage. *Form Number:* CMS–10261 (OMB control number: 0938–1054); *Frequency:* Yearly and Semi-annually; *Affected Public:* Private sector (Business or other For-profits); *Number of Respondents:* 544; *Total Annual Responses:* 3,508; *Total Annual Hours:* 160,215. (For policy questions regarding this collection contact Terry Lied at 410–786–8973).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Reporting Requirements for States Under Transitional Medical Assistance (TMA) Provisions; *Use:* The HHS Secretary is required to submit annual reports to Congress with information collected from states in accordance with section 5004(d) of the American Recovery and Reinvestment Act of 2009. Medicaid agencies in 50 states complete the reports while we review the information to determine if each state has met all of the reporting requirements specified under section 5004(d). *Form Number:*

CMS–10295 (OMB control number: 0938–1073). *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 50; *Total Annual Responses:* 200; *Total Annual Hours:* 400. (For policy questions regarding this collection contact Martin Burian at 410–786–3246.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Cooperative Agreement to Support Navigators in Federally-facilitated and State Partnership Exchanges; *Use:* Section 1311(i) of the Affordable Care Act requires Exchanges to establish a Navigator grant program as part of its function to provide consumers with assistance when they need it. Navigators will assist consumers by providing education about and facilitating selection of qualified health plans (QHPs) within Exchanges, as well as other required duties. Section 1311(i) requires that an Exchange operating as of January 1, 2014, must establish a Navigator Program under which it awards grants to eligible individuals or entities who satisfy the requirements to be Exchange Navigators. In States with a Federally-facilitated Marketplace (FFM) or State Partnership Marketplace (SPM), CMS will be awarding these grants. Navigator awardees must provide weekly, monthly, quarterly, and annual progress reports to CMS on the activities performed during the grant period and any sub-awardees receiving funds. *Form Number:* CMS–10463 (OMB control number: 0938–1215); *Frequency:* Annually, Quarterly, Monthly, Weekly; *Affected Public:* Private sector; *Number of Respondents:* 102; *Total Annual Responses:* 102; *Total Annual Hours:* 74,188. (For policy questions regarding this collection, contact Gian Johnson at 301–492–4323.)

Dated: May 6, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–11078 Filed 5–10–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–484, CMS–846, 854, 847, 848, 849, 10125, 10126, and CMS–10152]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by June 10, 2016.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–5806 *OR, Email: OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Attending Physician's Certification of Medical Necessity and Supporting Documentation Requirements; *Use:* The certificates of medical necessity (CMNs) collect information required to help determine the medical necessity of certain items. CMS requires CMNs where there may be a vulnerability to the Medicare program. Each initial claim for these items must have an associated CMN for the beneficiary. Suppliers (those who bill for the items) complete the administrative information (*e.g.,* patient's name and address, items ordered, etc.) on each CMN. The 1994 Amendments to the Social Security Act require that the supplier also provide a narrative description of the items ordered and all related accessories, their charge for each of these items, and the Medicare fee schedule allowance (where applicable). The supplier then sends the CMN to the treating physician or other clinicians (*e.g.,* physician assistant, LPN, etc.) who completes questions pertaining to the beneficiary's medical condition and signs the CMN. The physician or other clinician returns the CMN to the supplier who has the option to maintain a copy and then submits the CMN (paper or electronic) to CMS, along with a claim for reimbursement. *Form Number:* CMS–484 (OMB control number: 0938–0534); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits, Not-for-profits); *Number of Respondents:* 8,880; *Total Annual Responses:* 1,632,000; *Total Annual Hours:* 326,500; (For policy questions regarding this collection contact Paula Smith at 410–786–4709.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Durable Medical Equipment Medicare Administrative Contractors (MAC) Regional Carrier, Certificate of Medical Necessity and Supporting Documentation; *Use:* The certificates of medical necessity (CMNs) collect information required to help determine the medical necessity of certain items. CMS requires CMNs where there may be a vulnerability to the Medicare program. Each initial claim for these items must have an associated CMN for the beneficiary. Suppliers (those who bill for the items) complete the administrative information (*e.g.,* patient's name and address, items ordered, etc.) on each CMN. The 1994 Amendments to the Social Security Act require that the supplier also provide a narrative description of the items ordered and all related accessories, their charge for each of these items, and the Medicare fee schedule allowance (where applicable). The supplier then sends the CMN to the treating physician or other clinicians (*e.g.,* physician assistant, LPN, etc.) who completes questions pertaining to the beneficiary's medical condition and signs the CMN. The physician or other clinician returns the CMN to the supplier who has the option to maintain a copy and then submits the CMN (paper or electronic) to CMS, along with a claim for reimbursement. *Form Number:* CMS–846–849, 854, 10125 and 10126 (OMB control number: 0938–0679); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits, Not-for-profits); *Number of Respondents:* 462,000; *Total Annual Responses:* 462,000; *Total Annual Hours:* 418,563; (For policy questions regarding this collection contact Paula Smith at 410–786–4709.)

3. *Type of Information Collection Request:* Extension of a previously approved collection; *Title:* Data Collection for Medicare Beneficiaries Receiving NaF–18 Positron Emission Tomography (PET) to Identify Bone Metastasis in Cancer; *Use:* In Decision Memorandum #CAG–00065R, issued on February 26, 2010, the Centers for Medicare and Medicaid Services (CMS) determined that the evidence is sufficient to conclude that for Medicare beneficiaries receiving NaF–18 PET scan to identify bone metastasis in cancer is reasonable and necessary only when the provider is participating in and patients are enrolled in a clinical study designed to information at the time of the scan to assist in initial antitumor treatment planning or to guide subsequent treatment strategy by the identification, location and quantification of bone metastases in beneficiaries in whom bone metastases are strongly suspected based on clinical symptoms or the results of other diagnostic studies. Qualifying clinical studies must ensure that specific hypotheses are addressed; appropriate data elements are collected; hospitals and providers are qualified to provide the PET scan and interpret the results; participating hospitals and providers accurately report data on all Medicare enrolled patients; and all patient confidentiality, privacy, and other Federal laws must be followed. Consistent with section 1142 of the Social Security Act (the Act), the Agency for Healthcare Research and Quality (AHRQ) supports clinical research studies that CMS determines meets specified standards and address the specified research questions. To qualify for payment, providers must prescribe certain NaF–18 PET scans for beneficiaries with a set of clinical criteria specific to each solid tumor. The statuary authority for this policy is section 1862 (a)(1)(E) of the Act. The need to prospectively collect information at the time of the scan is to assist the provider in decision making for patient management. *Form Number:* CMS–10152 (OCN: 0938–0968); *Frequency:* Annually; *Affected Public:* Private Sector (Business or other for-profits); *Number of Respondents:* 25,000; *Total Annual Responses:* 25,000; *Total Annual Hours:* 2,084 hours. (For policy questions regarding this collection contact Stuart Caplan at 410–786–8564.)

Dated: May 6, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–11080 Filed 5–10–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

New Funding Formula

AGENCIES: Administration on Intellectual and Developmental Disabilities (AIDD), Administration on Disabilities (AoD), Administration for Community Living (ACL), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Administration on Intellectual and Developmental Disabilities (AIDD) within the Administration on Disabilities (AoD), located within the Administration for Community Living (ACL) at the United States Department of Health and Human Services (HHS), has developed a new funding formula for the State Councils on Developmental Disabilities (SCDD) and Protection and Advocacy Systems (P&A) located in each State and Territory.

DATES: Effective Date October 1, 2016.

ADDRESSES: The new formula is printed below and the estimated allotments for FY 2017 for each SCDD and P&A can be found at: *http://www.acl.gov/About_ACL/Allocations/DD-Act.aspx.*

FOR FURTHER INFORMATION CONTACT: Andrew Morris, Office of the Commissioner, Administration on Disabilities, 330 C St. SW., Washington, DC 20201. Telephone (202) 795–7408. Email *andrew.morris@acl.hhs.gov.* Please note the telephone number is not toll free. This document will be made available in alternative formats upon request. Written correspondence can be sent to Administration for Community Living, U.S. Department of Health and Human Services, 330 C St. SW., Washington, DC 20201.

SUPPLEMENTARY INFORMATION:

Background

The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106–402) provides, among other things, formula grants to States for the purpose of operating State Councils on Developmental Disabilities and Protection & Advocacy Systems for people with developmental disabilities. The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act) provides authority and flexibility in Section 122 to determine the formula for distributing the annual grant awards as long as the three statutory factors are met. These factors are:

1. Total population of the State/Territory
2. Need for services for people with developmental disabilities in the State/Territory
3. Financial need of the State/Territory

Responding to years of requests for a modernized funding formula and after a comprehensive development process, AIDD published a notice in the **Federal Register** on February 18, 2016 seeking comments on a new funding formula (81 FR 8204). AIDD has reviewed the comments submitted and is moving forward with the proposed formula. AIDD believes that this formula is clear, concise, transparent, and consistent with Congress' intent to provide funds to States based on greatest need. For the P&A program, in response to the comments received, AIDD will adopt this new formula over a three year period.

For complete details on methodology and development of the new formula please see the **Federal Register**, February 18, 2016, Vol 81, Number 32, Pages 8204–8205.

New Formula

Beginning in FY 2017, AIDD will use a new formula to distribute funds to SCDD and P&A programs after meeting statutory minimums and hold-harmless requirements for the SCDD. Funding will be allocated to States and Territories based on the following criteria:

1. *State/Territory Population (30%):* Based on July Census figures released in August of each year.
2. *Need for services (30%):* Based on a 1.58 percent prevalence rate for developmental disabilities in each State and Territory from the HHS National Health Interview Survey on Disability (NHIS–D).
3. *Financial need (40%):* Based on a combination of poverty (20%) and seasonally adjusted unemployment rates (20%) from July of each calendar year.

New Formula Phase-In

In their comments to AIDD, numerous P&A programs requested to phase in the new formula as a way of offsetting losses some grantees would experience if AIDD were to begin using the new formula immediately in FY 2017. AIDD concurs with this requested approach, and the new formula will be phased in for the P&A programs only with funds allotted in the following manner:

FY 2017: 75 percent previous formula and 25 percent new formula

FY 2018: 50 percent previous formula and 50 percent new formula

FY 2019: 100 percent new formula

The new formula will be in full effect for the SCDD programs on October 1, 2016. SCDDs will likely not experience significant fluctuations in their annual allotment due to that program's hold-harmless requirement.

Response to Public Comments

General

AIDD received 75 comments related to the new formula including 39 comments from SCDDs and 18 from P&As. AIDD also received 18 comments from other entities including non-profits and State agencies. Comments were received on each of the three required formula factors and weighting of the factors. Comments on the new formula were generally favorable and supportive. Commenters acknowledged that the current formula is more than 35 years old and uses data sources that do not adequately take into account the needs of people with developmental disabilities. Generally, they found the new formula to be more transparent and easier to understand. Comments also reinforced the need for the new formula in order to ease the administrative burden on ACL. Commenters pointed out that the previous formula used the per capita income rate which was an inadequate way to measure financial need and AIDD concurs with this comment. Several commenters stated that the current minimum allotments are inadequate; however these minimum allotments are set in statute and therefore not subject to change by AIDD.

Population

Some commenters requested that population have a higher weight in the formula. AIDD declined to raise the weighting as doing so could cause larger swings in the formula year-to-year and thereby make it more difficult for States to plan for their operating needs. Some commenters asked for the population of people with developmental disabilities to be considered rather than the total population. However, the DD Act requires that the entire State population must be taken into consideration.

Need for Services

As the formula workgroup and AIDD determined, the most clear and concise way to determine the need for services was to use the most current federal data for prevalence of people with developmental disabilities. Some commenters asked that AIDD use the Centers for Disease Control (CDC) prevalence rates for people with developmental disabilities, however, CDC's definition of developmental disabilities does not match AIDD's statutory definition.

Several commenters asked for different data to be used to determine the need for services in each State and Territory. There were varied opinions and suggestions, but none were clearly stronger than the sources proposed by AIDD.

Commenters also asked for the use of prevalence rates by State. That data is not currently available. AIDD is working with its federal partners to identify future opportunities to better understand the prevalence of developmental disabilities.

Financial Need

AIDD and the formula workgroup weighted financial need at 40 percent, with 20 percent based on State/Territory poverty levels and 20 percent based on seasonally adjusted unemployment data from July of each year. The workgroup felt that these measures were the best economic indicators to measure a State's financial need.

Several commenters asked for additional measures such as cost of living adjustments, workforce participation rates, and supplemental measures of poverty. HHS data experts stated that these data were not as reliable as the ones proposed and that the use of any of these data, including workforce participation rates, would not make a significant difference in the distribution of funds. Further, use of several of the proposed data would make the formula more complicated. Other commenters stated the need to use different data sources but did not give alternatives as was requested in the request for public comments. Therefore, AIDD concluded that there was no compelling reason to change data used for financial need.

Dated: May 5, 2016.

Jennifer Johnson,

Deputy Director, Administration on Intellectual and Developmental Disabilities.

[FR Doc. 2016–11108 Filed 5–10–16; 8:45 am]

BILLING CODE 4154–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0730]

Agency Information Collection Activities; Proposed Collection; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency.

Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requests for data needed to evaluate requests for Threshold of Regulation Exemptions for Substances Used in Food-Contact Articles.

DATES: Submit either electronic or written comments on the collection of information by July 11, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–0730 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Threshold of Regulation for Substances Used in Food-Contact Articles." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Threshold of Regulation for Substances Used in Food-Contact Articles—21 CFR 170.39 (OMB Control Number 0910–0298)—Extension

Under section 409(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(a)), the use of a food additive is deemed unsafe unless one of the following is applicable: (1) It conforms to an exemption for investigational use under section 409(j) of the FD&C Act; (2) it conforms to the terms of a regulation prescribing its use; or (3) in the case of a food additive which meets the definition of a food-contact substance in section 409(h)(6) of the FD&C Act, there is either a regulation authorizing its use in accordance with section 409(a)(3)(A) or an effective notification in accordance with section 409(a)(3)(B).

The regulations in § 170.39 (21 CFR 170.39) established a process that provides the manufacturer with an opportunity to demonstrate that the likelihood or extent of migration to food of a substance used in a food-contact article is so trivial that the use need not be the subject of a food additive listing regulation or an effective notification. The Agency has established two thresholds for the regulation of substances used in food-contact articles. The first exempts those substances used in food-contact articles where the resulting dietary concentration would be at or below 0.5 part per billion (ppb). The second exempts regulated direct food additives for use in food-contact articles where the resulting dietary exposure is 1 percent or less of the acceptable daily intake for these substances.

In order to determine whether the intended use of a substance in a food-contact article meets the threshold criteria, certain information specified in § 170.39(c) must be submitted to FDA. This information includes the following components: (1) The chemical composition of the substance for which the request is made; (2) detailed information on the conditions of use of the substance; (3) a clear statement of the basis for the request for exemption from regulation as a food additive; (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance; (5) results of a literature search for toxicological data on the substance and its impurities; and (6) information on the environmental impact that would result from the proposed use.

FDA uses this information to determine whether the food-contact article meets the threshold criteria. Respondents to this information collection are individual manufacturers and suppliers of substances used in food-contact articles (*i.e.*, food packaging and food processing equipment) or of the articles themselves.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR 170.39	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Threshold of regulation for substances used in food-contact articles	7	1	7	48	336

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compiling these estimates, we consulted our records of the number of regulation exemption requests received in the past three years. The annual hours per response reporting estimate of 48 hours is based on information received from representatives of the food packaging and processing industries and Agency records.

We estimate that approximately 7 requests per year will be submitted under the threshold of regulation exemption process of § 170.39, for a total of 336 hours. The threshold of regulation process offers one advantage over the premarket notification process for food-contact substances established by section 409(h) of FD&C Act (OMB control number 0910–0495) in that the use of a substance exempted by FDA is not limited to only the manufacturer or supplier who submitted the request for an exemption. Other manufacturers or suppliers may use exempted substances in food-contact articles as long as the conditions of use (*e.g.*, use levels, temperature, type of food contacted, etc.) are those for which the exemption was issued. As a result, the overall burden on both Agency and the regulated industry would be significantly less in that other manufacturers and suppliers would not have to prepare, and we would not have to review, similar submissions for identical components of food-contact articles used under identical conditions. Manufacturers and other interested persons can easily access an up-to-date list of exempted substances which is on display at FDA's Division of Dockets Management and on the Internet at *http://www.fda.gov/Food/IngredientsPackagingLabeling/PackagingFCS/ThresholdRegulationExemptions/ucm093685.htm*. Having the list of exempted substances publicly available decreases the likelihood that a company would submit a food additive petition or a notification for the same type of food-contact application of a substance for which the Agency has previously granted an exemption from the food additive listing regulation requirement.

Dated: May 5, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–11083 Filed 5–10–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0450]

Agency Information Collection Activities; Proposed Collection; Comment Request; Abbreviated New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of abbreviated new animal drug applications.

DATES: Submit either electronic or written comments on the collection of information by July 11, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. [FDA–2013–N–0450] for "Abbreviated New Animal Drug Applications." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Abbreviated New Animal Drug Applications—Sections 512(b)(2) and (n)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(b)(2) and (n)(1)) (OMB Control Number 0910–0669))—Extension

Under section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), any person may file an abbreviated new animal drug application (ANADA) seeking approval of a generic copy of an approved new animal drug. The information required to be submitted as part of an ANADA is described in section 512(n)(1) of the FD&C Act. Among other things, an ANADA is required to contain information to show that the proposed generic drug is bioequivalent to, and has the same labeling as, the approved new animal drug. We use the information submitted, among other things, to assess bioequivalence to the originally approved drug and thus, the safety and effectiveness of the generic new animal drug. We allow applicants to submit a complete ANADA or to submit information in support of an ANADA for phased review. Applicants may submit Form FDA 356v with a complete ANADA or a phased review submission to ensure efficient and accurate processing of information.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C Act sections 512 (b)(2) and (n)(1)	FDA Form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
ANADA	356v	18	1	18	159	2,862

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

FD&C Act sections 512 (b)(2) and (n)(1)	FDA Form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Phased Review with Administrative ANADA	356v	3	5	15	31.8	477
Total						3,339

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimates on our experience with ANADA submissions and requests for phased review. We estimate that we will receive 21 ANADA submissions per year over the next three years and that three of those submissions will request phased review. We estimate that each applicant that uses the phased review process will have approximately five phased reviews per application. We estimate that an applicant will take approximately 159 hours to prepare either an ANADA or the estimated 5 ANADA phased review submissions and the administrative ANADA.

Dated: May 5, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–11114 Filed 5–10–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1092]

Over-the-Counter Monograph User Fees: Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to gather stakeholder input on the potential development of a user-fee program for nonprescription (over-the-counter or OTC) monograph drugs. A user-fee program would provide funding to supplement congressional non-user-fee appropriations, and would support timely and efficient FDA review of the efficacy and safety of ingredients included in or proposed for inclusion in a monograph. FDA invites public comment on a potential OTC monograph user-fee program and also invites suggestions regarding the features such a user-fee program should include.

DATES: The public meeting will be held on Friday, June 10, 2016, from 9 a.m. to 5 p.m. EDT. However, depending on the level of public participation, the meeting may be extended or may end early.

ADDRESSES: The public meeting will be held at FDA's White Oak Campus, Bldg. 31 Conference Center, 10903 New Hampshire Ave., the Great Room (Rm. 1503A), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information refer to *http://www.fda.gov/aboutfda/workingatfda/buildingsandfacilities/whiteoakcampusinformation/ucm241740.htm.*

Comments: Regardless of participation at the public meeting, interested persons may submit electronic or written comments regarding this document. To provide adequate time for parties to submit comments before and after the public meeting, the docket will remain open 30 days after the public meeting.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–1092 for "Over-the-Counter Monograph User Fees: Public Meeting; Requests for Comments." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://*

www.regulations.gov. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amy Bertha, Office of Executive Programs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903–0002, 301–796–1647, email: *OTCMonographUserFeeProgram@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a public meeting to obtain input on a potential OTC monograph user-fee program. The Prescription Drug User Fee Act (PDUFA) and other FDA user-fee programs for medical products provide vital resources that have enabled more timely evaluation of the safety and efficacy of many prescription drugs, biologics and devices, with consequent benefits to public health through the expanded availability of products to treat and manage a wide variety of conditions. However, no user-fee program exists for hundreds of thousands of drug products marketed under OTC drug monographs. Millions of American consumers every year use monograph drug products to self-manage numerous conditions. The efficacy and safety of these drugs is important to public health, but FDA is critically under-resourced in this regulatory area.

In the United States, OTC drugs are marketed in two different ways—under an approved marketing application (new drug application (NDA) or abbreviated new drug application (ANDA)) or under the OTC monograph system, which was set up to review the safety and efficacy of drug products that were marketed OTC in the United States prior to the current statutory NDA process. When sponsors submit marketing applications, FDA reviews these applications and approves those drugs that are found to be safe and effective under their proposed conditions of use with benefits that outweigh their risks. However, at the time of establishment of the statutory efficacy requirement, there were hundreds of thousands of OTC products on the market. Withdrawing all those products and requiring submission of a new drug application for each one was undesirable for public health, and would have resulted in an overwhelming number of individual applications for review. Instead, in 1972, FDA established the OTC drug review process. In that process, expert advisory review panels were established to evaluate evidence of safety and efficacy for ingredients in broad therapeutic classes of OTC drug products. These panels reviewed data submissions and provided reports to FDA. Those reports made recommendations regarding whether or not the ingredients were "generally recognized as safe and effective (GRASE)" for use in self-treatment. The review panels also reviewed claims and recommended appropriate labeling. Based on the panels' reviews, FDA published in the **Federal Register** advanced notices of proposed rulemaking and, after additional Agency review and public comment, tentative final monographs. Subsequently, final regulations in the form of individual drug monographs were established for various therapeutic areas; these monographs establish conditions of use under which ingredients are considered GRASE for inclusion in an OTC drug. Conditions of use can include, for example, indications for use, dosage form, and route of administration. Products that conform to all applicable regulations, including all aspects of the relevant monograph, will be GRASE and not misbranded if marketed without an approved marketing application. GRASE determinations were made, and monographs proposed and finalized, for many ingredients for many drug products. However, the process has not been completed for all ingredients, nor for all OTC conditions of use. In many cases, the data submitted to the advisory panels were inadequate for a final GRASE determination; these ingredients are referred to as "Category III" ingredients in OTC products. Many products containing Category III ingredients without a GRASE determination continue to be marketed. By contrast, ingredients with a final determination of "not GRASE" need an approved marketing application to be legally marketed.

The OTC monograph drug review process remains one of the largest and most complex regulatory programs ever undertaken at FDA. There are approximately 88 simultaneous rulemakings in 26 broad therapeutic areas encompassing hundreds of thousands of products. There are approximately 800 active ingredients for over 1,400 different therapeutic uses. FDA needs additional resources to work toward finalization of the monograph review process and to address safety issues in a more efficient and timely manner. Additional resources would also better enable the Agency to consider innovations for drug products containing monograph ingredients, such as the development of new dosage forms for ingredients under existing monographs.

There are some important differences between marketing through approved applications and marketing under the monographs. NDAs and ANDAs are product-based; an application typically is submitted with data for a single drug product to be marketed by a single sponsor, and that application will be approved or not approved. By contrast, the monograph system is ingredient-based; numerous sponsors may make the same ingredient for the same use, and all may market drug products made with this ingredient as long as they comply with all applicable regulations, including the conditions of the monograph. Sponsors of monograph drugs are not required to seek FDA approval prior to marketing a product under the monograph. In addition, the monograph system, where ingredients are determined to be GRASE or not, is a public process. Data are submitted to public dockets, and anyone may provide input. By contrast, while FDA typically makes NDA information public after approval of a product, it generally cannot do so before.

At this time, once a monograph has been established, additional rulemaking is required for changes to that monograph. FDA is working on multiple policy reforms to streamline and modernize the monograph system; those policy reforms are not the topic of this public meeting. Funds from other user-fee programs cannot be used to fund monograph activities, and FDA receives very few resources that it can allocate to monograph review work.

The potential benefits of additional resources from a monograph user-fee program include benefits to public health and sponsors of monograph drug products, such as the following:

- Ability to address safety issues of currently marketed products in an efficient and timely manner.
- Timely determination on the safety and efficacy of monograph ingredients under the conditions of the monograph, helping to assure appropriate marketing of thousands of nonprescription products used daily by U.S. consumers.
- Increased availability of certain monograph product innovations proposed by industry.
- Streamlined ability to update monographs to allow modern testing methods in several areas, potentially reducing the need for animal testing, and simplifying and speeding product development.
- Development of information technology infrastructure to speed numerous parts of the monograph review process, and enable a modern robust system for submission of materials and archiving of documents.
- Development of a modern, useful, and transparent FDA monograph Web site to provide the public and industry with access to important information.
- Ability to hold more public meetings on important monograph issues.
- Increased ability of FDA to respond to monograph-related concerns and questions from the public and industry.
- Establishment of additional infrastructure for the efficient continued conduct of monograph activities in the longer term.

II. Purpose of Public Meeting

The purpose of the meeting is to obtain input from industry and other interested stakeholders regarding a potential OTC monograph user-fee program. There are several factors that FDA considers important in developing a user-fee program. First, to achieve a program's goals of efficient and timely oversight of a category of products, FDA must be able to rely on a stable and predictable source of adequate funding. Funding sources that result in unpredictable revenue cause uncertainty about FDA's ability to continue supporting activities over time which disrupts the Agency's regulatory operations and contributes to difficulties in conducting long-range planning. Second, the assessment of fees can create certain incentives or disincentives for the activity that is the subject of the fee. For example, a sponsor who currently has an unmarketed product has an incentive to pay a fee to seek FDA approval to market the product. However, once the product is approved and marketed, there is less incentive to pay a fee for additional specific activities regarding the product that are otherwise not required. If those activities are important from a public health perspective, assessing a fee for them would be undesirable because the fee could discourage entities to undertake those activities. With these considerations in mind, FDA seeks input on the following questions and welcomes any other relevant information the public would like to share.

- What types of user fees (*e.g.* product listing fees, facility fees, application fees, other types of fees) might be appropriate for a potential monograph user-fee program? Consider the following in your answer:
  - ○ For monograph products (unlike for products currently covered by user-fee programs), premarket applications are not generally submitted, and thus the approach regarding application-based fees might be expected to be different for a monograph user fee program compared to other user fee programs.
  - ○ Desirable industry activities or behavior that might be discouraged by the assessment of fees.
  - ○ The stability and predictability of the funding provided by the user-fee type.
- In conjunction with receiving user fees, FDA typically commits to certain performance goals related to the Agency's activities with respect to the relevant products. What types of performance goals might be important to consider from a public health and sponsor perspective? What parameters could be measured to gauge the success of a user-fee program?

III. Meeting Attendance and Participation

The public meeting is free and seating will be on a first-come, first-served basis. FDA is seeking participation (*i.e.*, attendance and oral presentations) at the public meeting by all interested parties. In general the meeting format may include, but will not be limited to, presentations by FDA staff, scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, and representatives of the OTC monograph industry. If you wish to attend the public meeting either in person or by viewing the web cast, FDA asks that you please register through Eventbrite by Tuesday, May 31, 2016, in order for FDA to estimate the number of attendees (*https://www.eventbrite.com/e/over-the-counter-monograph-user-fees-public-meeting-tickets-21565448838*).

If you wish to make an oral presentation at the public meeting, you must register through Eventbrite by Tuesday, May 31, 2016 (*https://www.eventbrite.com/e/over-the-counter-monograph-user-fees-public-meeting-tickets-21565448838*). FDA encourages individuals and organizations with common interests to coordinate and give a joint, consolidated presentation. FDA will try to accommodate all persons who wish to make a presentation; however, FDA may limit both the number of participants from individual organizations and the total number of attendees based on space and time limitations. FDA will notify registered presenters of their scheduled presentation times. Persons registered to speak should check in before the meeting and are encouraged to arrive early to ensure their designated order of presentation. Participants who are not present when called may not be permitted to speak at a later time. FDA will post an agenda of the public meeting and other background material at least 3 days before the public meeting and additional information will be available at: *http://www.fda.gov/Drugs/NewsEvents/ucm499390.htm.*

This public meeting will be web cast and the URL will be posted at *http://www.fda.gov/Drugs/NewsEvents/ucm499390.htm* at least 1 day before the meeting. A video record of the public meeting will be available at the same Web site address for 1 year. If you need special accommodations because of disability, please contact Amy Bertha (see **FOR FURTHER INFORMATION CONTACT**) no later than Friday, May 27, 2016.

IV. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD. A transcript will also be available in either hardcopy or on CD–ROM after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.*

Dated: *May 5, 2016.*

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–11098 Filed 5–10–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Kenneth Walker, Ph.D., University of Pittsburgh: Based on the admission of the Respondent, ORI found that Dr. Kenneth Walker, former postdoctoral fellow, Department of Pediatrics, University of Pittsburgh (UP), engaged in research misconduct in research supported by National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH), grant R01 DK081128.

ORI found that Respondent engaged in research misconduct by falsifying and/or fabricating data that were included in the following two (2) publications, one (1) submitted manuscript, and two (2) grant applications submitted to NIDDK, NIH:

- "Deletion of fibroblast growth factor receptor 2 from the peri-wolffian duct stroma leads to ureteric induction abnormalities and vesicoureteral reflux." *PLoS One* 8(2):e56062, 2013 (hereafter referred to as "*PLoS* 2013")
- "Fgfr2 is integral for bladder mesenchyme patterning and function." *Am J Physiol Renal Physiol.* 308(8):F888–98, 2015 Apr 15 (hereafter referred to as "*AJPRP* 2015")
- Unpublished manuscript submitted to *PLoS One* (hereafter referred to as the "Manuscript")
- R01 DK104374–01A1
- R01 DK109682–01

Specifically, ORI found that Respondent falsified and/or fabricated quantitative real-time polymerase chain reaction (qPCR) data to demonstrate a statistically significant or "trend" of statistical difference in the expression of renal or bladder urothelium and muscle developmental markers between control and experimental (mutant) mice, when there was none. The false qPCR data were reported in:

- *PLoS* 2013: Figure 2E
- *AJPRP* 2015: Figures 1E, 4C, 7G, 7J, 8F, 12A
- Manuscript: Figures 1C, 4C
- R01 DK104374–01A1: Figure 14E and text on pages 41, 42, 45
- R01 DK109682–01: Figures 10G and 11 and text on pages 43 and 45

Dr. Walker has entered into a Voluntary Settlement Agreement (Agreement) and has voluntarily agreed:

(1) To have his research supervised for a period of three (3) years, beginning on April 14, 2016; Respondent agrees that prior to submission of an application for U.S. Public Health Service (PHS) support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research contribution; Respondent agrees that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agrees to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract;

(3) to exclude himself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant for period of three (3) years, beginning on April 14, 2016; and

(4) to the retraction and/or correction of the *PLoS* 2013 and *AJPRP* 2015 publications, as determined by the corresponding author.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

Kathryn Partin,

Director, Office of Research Integrity.

[FR Doc. 2016–11062 Filed 5–10–16; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; Announcement of Requirements and Registration for "Move Health Data Forward Challenge"

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice.

SUMMARY: The Move Health Data Forward Challenge aims to incentivize participants to create an application programming interface (API) solution that utilizes the implementation specifications developed by the HEART Workgroup (Heart WG) to enable individuals to securely authorize the movement of their health data to destinations they choose. The statutory authority for this Challenge is Section 105 of the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358).

DATES:

Phase 1:

- Challenge launch: May 10, 2016
- Submissions due: September 8, 2016
- Evaluation period: September 9—October 14, 2016
- Phase 1 winners announced: October 31, 2016

Phase 2:

- Prototyping period begins: October 31, 2016
- Submissions due: January 12, 2017
- Evaluation period: January 12—February 10, 2017
- Phase 2 winners announced: February 23, 2017

Phase 3:

- Scaling period begins: February 23, 2017
- Submission period ends: May 1, 2017
- Phase 3 winners announced: May 31, 2017

FOR FURTHER INFORMATION CONTACT: Caroline Coy, *caroline.coy@hhs.gov* (preferred), 202–720–2932.

SUPPLEMENTARY INFORMATION:

Award Approving Official

Karen DeSalvo, National Coordinator for Health Information Technology.

Subject of Challenge

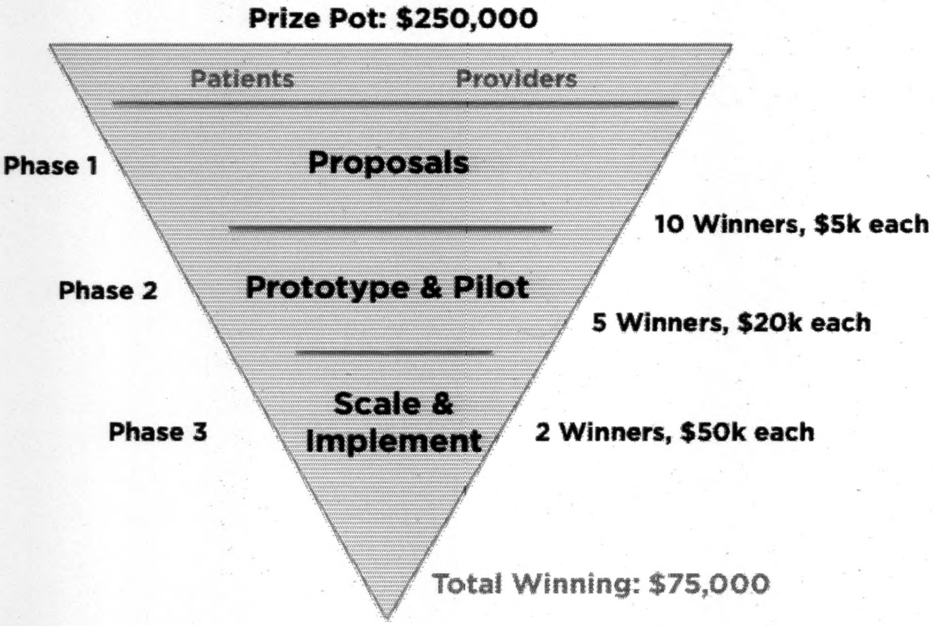
ONC participated with a number of security, privacy and health Information technology (health IT) stakeholders to launch the HEART WG. The HEART WG was developed to expedite the process of gathering representatives from many different health-related technical communities worldwide (private-sector, government and non-governmental organizations) working in areas such as patient authentication, authorization, and consent—to collaborate on developing open-source specifications. The impetus for creating the HEART WG was an effort by the Health IT Standards Committee (HITSC), which is charged with making recommendations to the National Coordinator for Health IT on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information. In 2013, the HITSC was tasked with reviewing whether ONC should consider enhancing the portfolio of transport standards to support the use of RESTful services in health information exchanges in 2013 and recommended that ONC support the developing and piloting of standards including OpenID Connect and OAuth2.0. In 2015, the HITSC recommended tracking development and piloting of new and emerging technology specifications including the User Managed Access (UMA) profile of OAuth2.0 for obtaining consumer consent. The HEART WG has developed a set of privacy and security specifications (HEART implementation specifications) using the following open standards: OAUTH 2.0, OpenID Connect and User Managed Access (UMA). These specifications enable an individual to control the authorization of access to health-related data sharing APIs. The goal of this Challenge is to incentivize participants to create a Solution that utilizes the HEART implementation specifications to enable individuals to securely authorize the movement of their health data to destinations they choose.

Engaging individuals is a requirement of the Challenge. Participants are expected to engage individuals to test implementation of the Solution and enable processes that require individuals to authorize the release of their health data to a destination they choose. Participants are required to recruit individuals and obtain their authorizations to test implementation of the Solution on those individuals' health data. The data for the API and Solution should be provided by Phase 2 finalists.

The Challenge will have three phases. Phase 1 will award $5000 for up 10 finalists each based on the proposals they submit to the Challenge. Phase 1 winners will be eligible to proceed to Phase 2 which will award $20,000 for up to 5 finalists each based on the prototype of their Solution. Phase 2 winners will be eligible to proceed to Phase 3 which will award $50,000 for up to two winners each based on the participant's ability to implement their Solution. This multi-phased approach allows participants to assemble, implement and test their Solutions given the novel Solutions expected. The final phase of the Challenge will require finalists to demonstrate a consumer-facing Solution that incorporates the HEART implementation specifications and uses an API to enable consumers to authorize the movement of their health data to destinations they choose. This Challenge encourages participants who may apply independently or team with others including health IT developers, health care providers and other entities with the appropriate expertise related to this Solution. Lessons learned and the Challenge's results will be shared in order to support other organizations implementing solutions enabling consumer-mediated exchange.

Challenge Summary

The Challenge has three phases ending in two finalists each winning $75,000.



Phase 1—Proposals

The Proposal Phase is designed to allow participants to articulate Solutions to increase consumers' access to and sharing of their information within electronic health record systems. In this phase, participants are expected to describe the technical, operational, financial and business aspects of their proposed Solution. This includes but is not limited to the value proposition, target consumer population and/or target health care providers, key partners, implementation plan, timeline, cost structure and budget overview, key activities and resources, and metrics for success (described below). The main goal of Phase 1 is for participants to articulate feasible and executable plans for innovative Solutions and demonstrate potential for impact.

A panel of independent reviewers will evaluate proposals and select finalists. Upon evaluating proposals and interview responses, judges will select up to 10 finalists to each receive a $5,000 award and advance to Phase 2 of the Challenge.

Phase 1 Submission Requirements

- Submissions in English and in pdf format.
- Submit by the deadline of September 8, 2016 using the online platform: *https://www.challenge.gov/?post_type=challenge&p=137291*
- General information about the participants and any team members
- Compliance with Health Insurance Portability and Accountability Act (HIPAA) if applicable
- Business Case (5 page maximum)
  - Includes an executive summary stating the value proposition
    - Describes how the proposed Solution will improve the exchange and accessibility of consumer health data
    - Describes the target consumer population and/or target health care providers
    - Describes the specific problem being solved
  - Description of the methods and technologies used to develop the Solution
    - Specify the HEART implementation specifications for data exchange that will be used by the proposed Solution
  - Financial overview that includes cost structure, projected revenue and expense budget, current funders and description of how funds will be used/allocated
  - Development plan and timeline
    - Describes key activities and resources required to employ the Solution
    - Plan to make the Solution readily available to consumers, for example to be used on existing mobile platforms or deployed on a public facing Web site
  - Metrics for success defined by applicant (*i.e.* Number of users of the Solution, money saved by using the Solution, time saved, increases in number of data exchanges between consumers and providers)
  - Potential risks and mitigation strategies, including security constraints
  - Description of the participant roles, responsibilities and capabilities
- Briefing deck presentation in pdf format of the Solution and use case(s) to provide a visual picture of the Project (10 slides maximum)
  - Content:
    - Brief description of proposed Solution and how the participants will use the HEART implementation specifications for consumer-mediated exchange of health information
    - Competitive advantage of the approach
    - Example use case
    - Proposed workflow & deliverables

Phase 2—Prototype & Pilot

The finalists of Phase 1 of the Challenge will then advance to a second phase focused on prototyping the Solution and demonstrating the effectiveness of the Solution and impact on consumer or provider health records accessibility and data exchange. The goal of Phase 2 is to demonstrate a viable Solution with high technological merit and potential to impact the quality of healthcare. Mentors will be available to help participants. Participants will have access to a community of experts to bring about high quality Solutions. Participants will test the HEART implementation specifications. Up to 5 finalists will receive $20,000 each and advance to Phase 3 of the Challenge.

Phase 2 Submission Requirements

- Submit by the deadline of January 16, 2017
- Submissions should be in pdf format
- Develop prototype using test data supplied by participant
- Provide an Implementation plan (up to 10 pages)
  - Describes key activities and resources required
  - Description of the pilot Project and budget
  - Provide timeline to go into production
- Video demonstration of the Solution and test results with live webinar
- Demonstration of the Solution's data security, accessibility, ease of data movement and HIPAA compliance if applicable

Phase 3—Scale & Implement

The final phase of the Challenge will involve testing the Solution in "real-life" situations. Engaging individuals is a requirement of this phase of the Challenge. Participants are expected to engage individuals to test implementation of the Solution and enable processes that require individuals to authorize the release of their health data to a destination they choose. Participants are required to recruit individuals to test implementation of the Solution. The data for this Solution should be provided by Phase 2 finalists. Participants are expected to engage and obtain authorization from a minimum of five (5) individuals to demonstrate and test implementation. This goal of Phase 3 is to accelerate the best Solutions in the health IT marketplace. This phase will also test the scalability of the Solution, the feasibility of implementation, and the impact of the intended outcomes. Phase 3 concludes with a presentation to ONC and judges during a live Demonstration (Demo) Day to showcase their Solutions and demonstrate impact. Two winners will each receive $50,000.

Phase 3 Submission Requirements

- Provide a description of the plan for engaging individuals in testing implementation of the Solution and processes for requiring individuals to authorize the release of their health data to a destination they choose
- Submissions must be in pdf format and should be no more than 10 pages
- Provide a narrative for the value proposition for the Solution and use case
- Report on progress in developing the Solution
- Demonstrate achievement of objectives set forth in the Business Case from Phase 1
- Description of lessons learned
- Provide concrete next steps for commercialization and/or broadened use, including how to attract consumers and/or providers to adopt and use the Solution
- Live demonstration of the Solution and results via webinar. This will not require travel by participants.
  - Demonstrate the capability to go live, scalability, HIPAA compliance (if applicable), and an interface optimized for consumers and/or providers

How to Enter

Participants can register by visiting: *https://www.challenge.gov/?post_type=challenge&p=137291* and click "Submit Solution" anytime during the proposal submission period stated above. Instructions and challenge information will be provided on the Challenge Web site. If potential participants are interested in finding team members for the Challenge, they may visit *https://www.challenge.gov/?post_type=challenge&p=137291* to browse ONC events and register online anytime during the proposal submission period stated above.

Eligibility Rules for Participating in the Challenge

To be eligible to win a prize under this Challenge, an individual or entity:

1. Shall have registered to participate in the Challenge under the rules promulgated by the Office of the National Coordinator for Health Information Technology.
2. Shall have complied with all the stated requirements of the Move Health Data Forward Challenge
3. In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States.
4. May not be a Federal entity or Federal employee acting within the scope of their employment.
5. Shall not be an HHS employee working on their applications or Submissions during assigned duty hours.
6. Shall not be an employee of the Office of the National Coordinator for Health Information Technology.
7. Federal grantees may not use Federal funds to develop COMPETES Act challenge applications unless consistent with the purpose of their grant award.
8. Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge Submission.
9. No HHS or ONC logo—The product must not use HHS' or ONC's logos or official seals and must not claim endorsement.
10. A product may be disqualified if it fails to function as expressed in the description provided by the Participant, or if it provides inaccurate or incomplete information.
11. If applicable, the proposed Solution must be HIPAA compliant to be eligible for entry into the Challenge.
12. All individual members of a team must meet the eligibility requirements.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a Challenge if the facilities and employees are made available to all individuals and entities participating in the Challenge on an equitable basis.

Participants must agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from my participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise. Participants are required to obtain liability insurance or demonstrate financial responsibility in the amount of $500,000, for claims by a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a Challenge.

Participants must also agree to indemnify the Federal Government against third party claims for damages arising from or related to Challenge activities.

General Submission Requirements

In order for a Submission to be eligible to win this Challenge, it must meet the following requirements:

1. No HHS or ONC logo—The Solution must not use HHS' or ONC's logos or official seals and must not claim endorsement.
2. Functionality/Accuracy—A Solution may be disqualified if it fails to function as expressed in the description provided by the participant, or if it provides inaccurate or incomplete information.
3. Security—Submissions must be free of malware. Participant agrees that ONC may conduct testing on the API(s) to determine whether malware or other security threats may be present. ONC may disqualify the API(s) if, in ONC's judgment, the app may damage government or others' equipment or operating environment.

Registration Process for Participants

To register for this Challenge, participants can access *http://www.challenge.gov* and search for "Move Health Data Forward Challenge."

Prize

- Phase 1: up to 10 winners each receive $5000
- Phase 2: up to 5 winners each receive $20,000
- Phase 3: up to 2 winners each receive $50,000
- Total: up to $250,000 in prizes

Payment of the Prize

Prize will be paid by contractor.

Basis Upon Which Winner Will Be Selected

Eligible Challenge entries will be judged by a review panel composed of federal employees and experts in compliance with the requirements of the America COMPETES Act and the Department of Health and Human Services judging guidelines: *http://www.hhs.gov/idealab/wp-content/uploads/2014/04/HHS-COMPETITION-JUDGING-GUIDELINES.pdf*. The review panel will make selections based upon the criteria outlined below.

Phase 1

Participant Capabilities

- Is there appropriate expertise and capability to bring the idea to the testing stage?
- Does the participant have the resources available to carry out proposed work?

Impact Potential

- Does the proposed Solution have potential to improve the quality of health care?
- Is the proposed Solution using the HEART implementation specifications?
- Does the Submission describe how the Solution can be optimized for the greater population of consumers and/or providers?
- Is there a clear plan to make the Solution readily available to consumers on existing mobile platforms or a public-facing Web site?
- Is the Solution relevant to ONC priorities of improving the quality of health care?

Executability

- If applicable, does the Solution demonstrate its HIPAA compliance? Does the Solution utilize the HEART implementation specifications?
- Does the Submission demonstrate a reasonable and credible approach to accomplish the proposed objectives, tasks, outcomes and deliverable?
- Does the Submission address a pathway or timeline to broad use?
- Does the Submission clearly define potential risks?
- Does the Submission include a thorough description for the use of funds?

Phase 2

Technical Merit

- Does the Solution utilize privacy and security specifications/regulations?
  - ○ If applicable, is the Solution HIPAA compliant?
  - ○ Does the Solution enable an individual to control the authorization of access to data sharing APIs, using the HEART (HEART) implementation specifications?
- Does the Solution support consumer-mediated exchange?
- Is the consumer's health information easy to find, retrieve and access (data-accessibility)?

- Is the Solution easy to manage (ease of use, ease of data movement, user friendly)?

Viability

- Does the Solution present a deep understanding of the market for the Solution?
- Is there a clear advantage that differentiates this Solution from others?
- Is the Solution a model for real world implementation practical?
- Is the Solution economically viable and scalable/replicable?
- Are consumers and/or providers already participating (*e.g.* have signed up to test the Solution)?

Impact

- Does the participant present a theory or explanation of how the proposed Solution would improve the future of consumer-mediated health information sharing?
- Is there clear evidence of a health care need based on research for a specific consumer population, and is there evidence that Solution impacts this population?
- Could the Solution improve the experience of information sharing between consumers and their health care providers?
- Is the Solution's design human-centered so that it enables the consumer to understand and manage their health?

Phase 3

Impact

- Do the results indicate how the Solution will enable consumers to share data in a "real-life" setting?
- Does the Solution improve the experience of information sharing between consumers and their health care providers?

Deployability

- Is the Solution readily available to consumers to be used on existing mobile platforms or a public facing Web site?
- Is the Solution designed for ease of learning and ease of use by the target user population?

Scalability

- How scalable is the Solution in a real-world setting? How likely are cost efficiencies for delivery at greater scale?
- Is the user experience optimized for the greater population of consumers and/or providers?
- Is there a plan for getting consumers and/or providers to adopt and use the Solution?

Additional Information

General Conditions: ONC reserves the right to cancel, suspend, and/or modify the Challenge, or any part of it, for any reason, at ONC's sole discretion.

Intellectual Property: Each participant retains title and full ownership in and to their Submission. Participants expressly reserve all intellectual property rights not expressly granted under the challenge agreement. By participating in the Challenge, each entrant hereby irrevocably grants to the Government a limited, non-exclusive, royalty-free, perpetual, worldwide license and right to reproduce, publically perform, publically display, and use the Submission to the extent necessary to administer the challenge, and to publically perform and publically display the Submission, including, without limitation, for advertising and promotional purposes relating to the Challenge. This may also include displaying the results of the Challenge on a public Web site or during a public presentation.

Representation, Warranties and Indemnification

By entering the Challenge, each applicant represents, warrants and covenants as follows:

(a) Participant is the sole author, creator, and owner of the Submission;

(b) The Submission is not the subject of any actual or threatened litigation or claim;

(c) The Submission does not and will not violate or infringe upon the intellectual property rights, privacy rights, publicity rights, or other legal rights of any third party;

(d) The Submission does not and will not contain any harmful computer code (sometimes referred to as "malware," "viruses" or "worms"); and

(e) The Submission, and participants' use of the Submission, does not and will not violate any applicable laws or regulations, including, without limitation, HIPAA, applicable export control laws and regulations of the U.S. and other jurisdictions.

If the Submission includes any third party works (such as third party content or open source code), participant must be able to provide, upon request, documentation of all appropriate licenses and releases for such third party works. If participant cannot provide documentation of all required licenses and releases, the Federal Agency sponsor reserves the right, at their sole discretion, to disqualify the applicable Submission. Conversely, they may seek to secure the licenses and releases and allow the applicable Submission to remain in the Challenge, while reserving all rights with respect to such licenses and releases.

Participants must indemnify, defend, and hold harmless the Federal Government from and against all third party claims, actions, or proceedings of any kind and from any and all damages, liabilities, costs, and expenses relating to or arising from participant's Submission or any breach or alleged breach of any of the representations, warranties, and covenants of participant hereunder. The Federal Agency sponsors reserve the right to disqualify any Submission that, in their discretion, deems to violate these Official Rules, Terms & Conditions.

Authority: 15 U.S.C. 3719.

Karen DeSalvo,
National Coordinator for Health Information Technology.

[FR Doc. 2016–11102 Filed 5–9–16; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–new–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Assistant Secretary for Health, Office of Adolescent Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before July 11, 2016.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–new–60D for reference.

Information Collection Request Title: Federal Evaluation of Making Proud Choices! (MPC!)

Abstract: The Office of Adolescent Health (OAH), U.S. Department of Health and Human Services (HHS) is requesting approval by OMB for a new data collection. The Federal Evaluation of Making Proud Choices (MPC!) will provide information about program design, implementation, and impacts through a rigorous assessment of program of a highly popular teen pregnancy prevention curriculum—MPC; it includes the baseline survey instrument related to the impact study and instruments for the implementation and fidelity assessment. The evaluation will be conducted in 39 schools nationwide. The data collected from these instruments will be used to describe the characteristics of the study sample of youth, being used in the models for estimating program impacts, and provide a detailed understanding of program implementation.

Need and Proposed Use of the Information: The baseline survey data will be used to describe the study sample and to assess whether random assignment successfully generated treatment and control groups balanced on important baseline characteristics. The findings from these analyses of program impacts and implementation will be of interest to the general public, to policymakers, and to schools and other organizations interested in supporting a comprehensive approach to teen pregnancy prevention.

Likely Respondents: The baseline data will be collected through a Web based survey with study participants in the participating evaluation schools. Study participants will primarily be in 8th or 9th grade at the time of the baseline survey, and will be enrolled in the schools' mandatory health class.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Baseline survey of impact study participants	865	1	30/60	432.5
Master topic guide for staff interviews	39	1	1	39
Staff survey	26	1	30/60	13
Program attendance data and collection protocol	13	14	9/60	27.3
Program fidelity checklist	9	14	15/60	31.5
Youth focus group	87	1	1	87
Total				630.5

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2016–11069 Filed 5–10–16; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel, Health Disparity SBIR Review (2016/10).

Date: June 29, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451–4794, *dennis.hlasta@mail.nih.gov.*

Dated: May 5, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11023 Filed 5–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF MENTAL HEALTH, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: June 6–8, 2016.

Time: June 06, 2016, 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes Of Health, Porter Neuroscience Research Center GE 620/630/

640, Building 35A Convent Drive Bethesda, MD 20892.

Time: June 06, 2016, 6:00 p.m. to 7:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: June 07, 2016, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes Of Health, Porter Neuroscience Research Center GE 610/640, Building 35A Convent Drive, Bethesda, MD 20892.

Time: June 08, 2016, 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators .

Place: National Institutes Of Health, Porter Neuroscience Research Center, GE 610/640, Building 35A Convent Drive Bethesda, MD 20892.

Contact Person: Jennifer E Mehren, Ph.D., Scientific Advisor, Division of Intramural Research Programs, National Institute of Mental Health, NIH, 35A Convent Drive, Room GE 412, Bethesda, MD 20892–3747, 301–451–3810, *mehrenj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 4, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11026 Filed 5–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Review of K99 Applications.

Date: July 8, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Regis Washington DC, 923 16th and K Street NW., Washington, DC 20006.

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 1 Democracy Plaza, 6701 Democracy Blvd., Room 1068, Bethesda, MD 20892, 301–435–0807, *slicelw@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel COBRE Phase 1 Applications.

Date: July 22, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Regis Washington DC, 923 16th and K Street NW., Washington, DC 20006.

Contact Person: Lee Warren Slice, Scientific Review Officer, David Geffen School of Med, UCLA, Warren Hall, 11–151, 900 Veteran Ave., Los Angeles, CA 90095, 310–206–0909, *lslice@mednet.ucla.edu.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 5, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11024 Filed 5–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIGMS Initial Review Group; Training and Workforce Development Subcommittee—B.

Date: June 30, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott, 5701 Marinelli Road, Bethesda, MD 20814.

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institutes of General Medical Sciences, 45 Center Drive RM 3AN18A, Bethesda, MD 20814, (301) 435–0965, *newmanla2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research, Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 5, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11025 Filed 5–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Confirmatory Efficacy Clinical Trials of Non-Pharmacological Interventions for Mental Disorders (Confirmatory Efficacy).

Date: May 25, 2016.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of

Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis, Panel Adaptation/Optimization of Technology to Support Social Functioning (ADOPTech).

Date: May 25, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel Clinical Trials to Test the Effectiveness of Treatment, Preventive, and Services Interventions.

Date: June 2, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: *May 4, 2016.*

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11027 Filed 5–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Chemo/Dietary Prevention.

Date: June 1, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M Quadri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–TW16–001: Global Injury and Trauma.

Date: June 1, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

*Name of Committee:*Center for Scientific Review Special Emphasis Panel; Hypertension and Microcirculation.

Date: June 6, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Katherine M Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: June 6–7, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Andrea B Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 4, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11021 Filed 5–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group—Mental Health Services Research Committee.

Date: June 2, 2016.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6136, MSC 9606, Bethesda, MD 20852, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: May 4, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11028 Filed 5–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee.

Date: June 7, 2016.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3F30A, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: June 16, 2016.

Time: 9:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 2C100, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ann Marie M. Cruz, Ph.D., Program Management & Operations Branch, DEA/SRP Rm 3E71, National Institutes of Health, NIAID, 5601 Fishers Lane, Rockville, MD 20852, 301–761–3100, *ann-marie.cruz@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: June 21, 2016.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 3G30, 5601 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dharmendar Rathore, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G30, National Institutes of Health/NIAID, 5601 Fishers Lane, Drive, MSC 9823, Bethesda, MD 20892–9823, 240–669–5058, *rathored@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 5, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11022 Filed 5–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: June 6–7, 2016.

Closed: June 6, 2016, 3:00 p.m. to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 31 Center Drive, Building 31, Conference Room 6, Bethesda, MD 20892.

Open: June 7, 2016, 8:00 a.m. to adjournment.

Agenda: The agenda will include opening remarks, administrative matters, Director's report, NIH Health Disparities update, and other business of the Council.

Place: National Institutes of Health, 31 Center Drive, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Dr. Joyce A. Hunter, Deputy Director, NIMHD, National Institutes of Health, National Institute on Minority Health and Heath Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 402–1366, *hunterj@nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus.

All visitor vehicles, including taxis, hotel, and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: May 4, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11030 Filed 5–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel PA–13–347 NIH Support for Conferences and Scientific Meetings (Parent R13/U13).

Date: June 27, 2016.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20852.

Contact Person: Deborah Ismond, Ph.D., Scientific Review Officer, Division of Scientific Programs, National Institute on Minority Health, and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 402–1366, *ismonddr@mail.nih.gov.*

Dated: *May 4, 2016.*

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–11029 Filed 5–10–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0368]

Practicability Review: Standards for Living Organisms in Ships' Ballast Water Discharged in United States Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of its Practicability Review conducted for the purpose of determining whether technology to comply with a performance standard more stringent than that required by the Coast Guard's current regulations on Ballast Water Discharges can be practicably implemented and whether testing protocols that can assure accurate measurement of compliance with a more stringent performance standard can be practicably implemented. Coast Guard ballast water regulations require the Coast Guard to undertake and publish the results of its Practicability Review. In the Practicability Review, we conclude that, at this time, technology to achieve a significant improvement in ballast water treatment efficacy onboard vessels cannot be practicably implemented. The reason for this determination is that, as of the date of completion of the Practicability Review, there are no data demonstrating that ballast water management systems can meet a discharge standard more stringent than the existing performance standards. In light of this determination, the Coast Guard has not evaluated whether testing protocols exist which can accurately measure efficacy of treatment against a performance standard more stringent than the existing performance standards.

DATES: The Practicability Review is available on May 11, 2016.

ADDRESSES: The Practicability Review is available at: *http://homeport.uscg.mil/ballastwater* under Regulations and Policy Documents.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CDR Meridena Kauffman, Chief, Environmental Standards Division (CG–OES–3), Coast Guard, telephone 202—372–1430, email *Meridena.D.Kauffman@uscg.mil.*

Dated: May 5, 2016.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2016–11129 Filed 5–10–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of Chief Information Officer; Agency Information Collection Activities: REAL ID: Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes

AGENCY: Office of the Secretary, DHS.

ACTION: 30-Day Notice and request for comments; Reinstatement with change, 1601–0005.

SUMMARY: The Department of Homeland Security, Office of the Secretary, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on Monday, February 22, 2016 at 81 FR 8736 for a 60-day public comment period. Three comments were received by DHS. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until June 10, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: The REAL ID Act of 2005 (the Act) prohibits Federal agencies from accepting State-issued drivers' licenses or identification cards for any official purpose—defined by the Act and regulations as boarding commercial aircraft, accessing Federal facilities, or entering nuclear power plants—unless the license or card is issued by a State that meets the requirements set forth in the Act. Title II of Division B of Public Law 109–13, codified at 49 U.S.C. 30301 note. The REAL ID regulations, which DHS issued in January 2008, establish the minimum standards that States must meet to comply with the Act. See 73 FR 5272, also 6 CFR part 37 (Jan. 29, 2008). These include requirements for presentation and verification of documents to establish identity and lawful status, standards for document issuance and security, and physical security requirements for drivers' license production facilities. For a State to achieve full compliance, the Department of Homeland Security (DHS) must make a final determination that the State has met the requirements contained in the regulations and is compliant with the Act. The regulations include new information reporting and record keeping requirements for States seeking a full compliance determination by DHS. As discussed in more detail below, States seeking DHS's full compliance determination must certify that they are meeting certain standards in the issuance of drivers' licenses and identification cards and submit security plans covering physical security of document production and storage facilities as well as security of personally identifiable information. 6 CFR 37.55(a). States also must conduct background checks and training for employees involved in the document production and issuance processes and retain and store applicant photographs and other source documents. 6 CFR 37.31 and 37.45. States must recertify compliance with REAL ID every three years on a rolling basis as determined by the Secretary of Homeland Security. 6 CFR 37.55.

Certification Process Generally—Section 202(a)(2) of the REAL ID Act requires the Secretary to determine whether a state is meeting its requirements, "based on certifications made by the State to the Secretary." To assist DHS in making a final compliance determination, 37.55 of the rule requires the submission of the following materials: (1) A certification by the highest level Executive official in the State overseeing the DMV that the State has implemented a program for issuing driver's licenses and identification cards in compliance with the REAL ID Act; (2) A letter from the Attorney General of the State confirming the State has the legal authority to impose requirements necessary to meet the standards; (3) A description of a State's exceptions process to accept alternate documents to establish identity and lawful status and wavier process used when conducting background checks for individuals involved in the document production process; and (4) The State's security plan.

Additionally, after a final compliance determination by DHS, states must recertify compliance every three years on a rolling basis as determined by DHS. 6 CFR 37.55(b).

State REAL ID programs will be subject to DHS review to determine whether the State meets the requirements for compliance. States must cooperate with DHS's compliance review and provide any reasonable information requested by DHS relevant to determining compliance. Under the rule, DHS may inspect sites associated with the enrollment of applicants and the production, manufacture, personalization, and issuance of driver's licenses or identification cards. DHS also may conduct interviews of employees and contractors involved in the document issuance, verification, and production processes. 6 CFR 37.59(a).

Following a review of a State's certification package, DHS may make a preliminary determination that the State needs to take corrective actions to achieve full compliance. In such cases, a State may have to respond to DHS and explain the actions it took or plans to take to correct any deficiencies cited in the preliminary determination or alternatively, detail why the DHS preliminary determination is incorrect. 6 CFR 37.59(b).

Security Plans—In order for States to be in compliance with the Act, they must ensure the security of production facilities and materials and conduct background checks and fraudulent document training for employees involved in document issuance and production. REAL ID Act sec. 202(d)(7)–(9). The Act also requires compliant licenses and identification cards to include features to prevent tampering, counterfeiting, or duplication. REAL ID Act sec. 202(b). To document compliance with these requirements, the regulations require States to prepare a security plan and submit it as part of their certification package. 6 CFR 37.41. At a minimum, the security plan must address steps the State is taking to ensure: The physical security of production materials and storage and production facilities; security of personally identifiable information maintained at DMVs including a privacy policy and standards and procedures for document retention and destruction; document security features including a description of the use of biometrics and the technical standards used; facility access control including credentialing and background checks; fraudulent document and security awareness training; emergency response; internal audit controls; and an affirmation that the state possesses the authority and means to protect the confidentiality of REAL ID documents issued in support of criminal justice agencies or similar programs. The security plan also must include a report on card security and integrity.

Background checks and waiver process—Within its security plans, the rule requires States to outline their approach to conducting background checks of certain DMV employees involved in the card production process. 6 CFR 37.45. Specifically, States are required to perform background checks on persons who are involved in the manufacture or production of REAL ID driver's licenses and identification cards, as well as on individuals who have the ability to affect the identity information that appears on the driver's license or identification card and on current employees who will be assigned to such positions. The background check must include a name-based and fingerprint-based criminal history records check, an employment eligibility check, and for newer employees a prior employment reference check. The regulation permits a State to establish procedures to allow for a waiver for certain background check requirements in cases, for example, where the employee has been arrested, but no final disposition of the matter has been reached.

Exceptions Process—Under the rule, a State DMV may choose to establish written, defined exceptions process for persons who, for reasons beyond their control, are unable to present all necessary documents and must rely on alternate documents to establish identity and date of birth. 6 CFR 37.11(h). Alternative documents to demonstrate lawful status will only be allowed to demonstrate U.S. citizenship. The State must retain copies or images of the alternate documents accepted under the exceptions process and submit a report with a copy of the exceptions process as part of its certification package.

Recordkeeping—The rule requires States to maintain photographs of applicants and records of certain source documents. Paper or microfiche copies of these documents must be retained for a minimum of seven years. Digital images of these documents must be retained for a minimum of ten years. 6 CFR 37.31.

Extension Requests—Pursuant to sec. 37.63 of the Final Rule, States granted an initial extension may file a request for an additional extension. Subsequent extensions will be granted at the discretion of the Secretary.

The collection of the information will support the information needs of DHS in its efforts to determine State compliance with requirements for issuing REAL ID driver's licenses and identification cards. States may submit the required documents in any format that they choose. DHS has not defined specific format submission requirements for States. DHS will use all of the submitted documentation to evaluate State progress in implementing the requirements of the REAL ID Final Rule. DHS has used information provided under the current collection to grant extensions and track state progress.

Submission of the security plan helps to ensure the integrity of the license and identification card issuance and production process and outlines the measures taken to protect personal information collected, maintained, and used by State DMVs. Additionally, the collection will assist other Federal and State agencies conducting or assisting with necessary background and immigration checks for certain employees. The purpose of the name-based and fingerprint based CHRC requirement is to ensure the suitability and trustworthiness of individuals who have the ability to affect the identity information that appears on the license; have access to the production process; or who are involved in the manufacture or issuance of the licenses and identification cards.

In compliance with Government Paperwork Elimination Act, States will be permitted to electronically submit the information for their security plans, certification packages, recertifications, extensions, and written exceptions processes. States will be permitted to submit electronic signatures but must keep the original signature on file. Additionally, because they contain sensitive security information (SSI), the security plans must be handled and protected in accordance with 49 CFR part 1520. 6 CFR 37.41(c). The final rule does not dictate how States must submit their employees' fingerprints to the FBI for background checks; however it is assumed States will do so via electronic means or another means determined by the FBI.

Information provided will be protected from disclosure to the extent appropriate under applicable provisions of the Freedom of Information Act, the Privacy Act of 1974, the Driver's Privacy Protection Act, as well as DHS's Privacy Impact Assessment for the REAL ID Act.

There have been no program changes or new requirements established as a result of this collection request. Extensions were covered in the initial request however it was incorrectly removed from the subsequent request.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Analysis

Agency: Office of the Secretary, DHS.

Title: REAL ID: Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes.

OMB Number: 1601–0005.

Frequency: Annually.

Affected Public: State, local, and tribal governments.

Number of Respondents: 56.

Estimated Time per Respondent: 1,178 hours.

Total Burden Hours: 446,246 hours.

Dated: May 5, 2016.

Carlene C. Ileto,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2016–11133 Filed 5–10–16; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0017]

Information Sharing and Analysis Organization

AGENCY: Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: This Notice announces a request for public comment on draft products produced by the Information Sharing and Analysis Organization (ISAO) Standards Organization (SO) in partnership with the six established ISAO SO Standards Working Groups (SWG). This is the first iteration of draft products that will be used in the development of voluntary standards for Information Sharing and Analysis Organizations (ISAOs) as they relate to E.O. 13691.

DATES: The comment period for the first iteration of the SWG draft voluntary standards for ISAOs will be open until Friday, June 17, 2016. Comments will be accepted after this date, but may not be reflected until later iterations of draft standards documents.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the draft voluntary standards documents, please contact the ISAO Standards Organization at *Contact@ISAO.org.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

On February 13, 2015, President Obama signed E.O. 13691 intended to enable and facilitate "private companies, nonprofit organizations, and executive departments and agencies . . . to share information related to cybersecurity risks and incidents and collaborate to respond in as close to real time as possible."

In accordance with E.O. 13691, DHS has entered into a cooperative agreement with a non-governmental ISAO SO led by the University of Texas at San Antonio with support from the Logistics Management Institute (LMI) and the Retail Cyber Intelligence Sharing Center (R–CISC). The ISAO SO is working with existing information sharing organizations, owners and operators of critical infrastructure, relevant agencies, and other public and private sector stakeholders to identify a common set of voluntary standards or guidelines for the creation and functioning of ISAOs.

As part of this collaborative, transparent, and industry-driven process, the ISAO SO has established six working groups to assist in the development of voluntary standards. This notice is to request comment on the initial working group draft products. Your participation in this comment process is highly encouraged to ensure all equities are being met. To join a working group or to find out how else you can best participate, please visit *www.ISAO.org* or email *Contact@ISAO.org.*

Meeting Details

To view details on the corresponding May 19, 2016 in person meeting in Anaheim, CA, please visit the *Notice of Public Meeting* **Federal Register** Notice and visit *www.ISAO.org.*

Submitting Written Comments

The initial draft documents can be found and comments submitted directly to the ISAO SO at *https://www.ISAO.org/products/drafts/.* This method is preferred by the ISAO SO.

You may also submit written comments to the docket using one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Although this is not a rulemaking action, comments are being submitted to the Federal eRulemaking Portal in an effort to provide transparency to the general public.

(2) *Email: Contact@ISAO.org.* Include the docket number in the subject line of the message.

(3) *Mail:* ISAO Standards Organization, c/o LMI, 1777 NE Loop 410, Suite 808, San Antonio, TX 78217–5217.

To avoid duplication, please use only one of these four methods. All comments must either be submitted to the online docket on or before June 17, 2016, or reach the Docket Management Facility by that date.

Comments may be submitted directly to the ISAO SO using the method described above after June 17, 2016. However, these comments may not be reflected until later iterations of draft standards documents.

References

Executive Order 13691 can be found at: *https://www.whitehouse.gov/the-press-office/2015/02/13/executive-order-promoting-private-sector-cybersecurity-information-shari.*

For additional information about the ISAO Standards Organization, draft products, and how you can best participate in the standards development process, please go to *www.ISAO.org* or email *Contact@ISAO.org.*

Authority: 6 U.S.C. 131–134; 6 CFR 29; E.O. 13691.

Dated: May 9, 2016.

Andy Ozment,

Assistant Secretary, Cybersecurity and Communications, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2016–11128 Filed 5–10–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5948–N–01]

Mortgagee Review Board: Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c)(5) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Nancy A. Murray, Secretary to the Mortgagee Review Board, 451 Seventh Street SW., Room B–133/3150, Washington, DC 20410–8000; telephone (202) 708–2224 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (12 U.S.C. 1708(c)(5)) requires that HUD "publish a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board ("Board"). In compliance with the requirements of Section 202(c)(5), this notice advises of actions that have been taken by the Board in its meetings from October 1, 2014 to September 30, 2015.

I. Civil Money Penalties, Withdrawals of FHA Approval, Suspensions, Probations, Reprimands, and Settlements

1. *Allied First Bank, SB, Oswego, IL [Docket No. 15–1506–MR]*

Action: On June 19, 2015, the Board entered into a settlement agreement with Allied First Bank, SB ("AFB") that required AFB to pay a civil money penalty in the amount of $17,000 without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: AFB (a) improperly used the name of FHA in certain correspondence to imply the correspondence was from and/or endorsed by HUD/FHA; (b) failed to timely notify HUD that AFB has entered into a written agreement with the Federal Reserve Board of Chicago on May 22, 2014 and; (c) failed to timely notify HUD that AFB had entered into a consent order with the Federal Deposit Insurance Corporation and the State of Illinois Department of Financial and Professional Regulation.

2. American Home Free Mortgage, Prosper, TX [Docket No. 14–1682–MR]

Action: On May 21, 2015, the Board voted to withdraw the FHA approval of American Home Free Mortgage ("AHFM") on a permanent basis. On July 24, 2015, the Board entered into a settlement agreement with AHFM that required AHFM to pay a civil money penalty in the amount of $169,419, and to abide by the Board's action concerning the permanent withdrawal of its FHA approval.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: AHFM (a) submitted false certifications to HUD/FHA in 2010, 2012 and 2013 for the annual recertifications of its FHA approval; (b) failed to ensure that individuals originating FHA insured loans were exclusively employed by AHFM; (c) failed to implement a Quality Control Plan in compliance with HUD/FHA requirements; (d) failed to conduct Quality Control reviews in accordance with HUD/FHA requirements; (e) participated in a scheme to inflate the amount of fees collected in loan transactions by disguising them as construction fees; (f) submitted loan case binders that falsely identified fees as construction costs or fees; (g) provided false certifications to HUD/FHA regarding conflicts of interests; (h) allowed personnel involved in the day-to-day origination process to conduct Quality Control reviews; (i) allowed the identification number of a terminated employee to be used to access FHA Connection; and (j) failed to require it's appraiser to explain the use of a comparable sale that was over 12 months old.

3. Bogman Inc., Silver Spring, MD [Docket No. 15–1507–MR]

Action: On August 11, 2015, the Board entered into a settlement agreement with Bogman Inc., ("Bogman") that required Bogman to pay a civil money penalty in the amount of $50,000 without admitting fault or liability and to submit, on a quarterly basis during the period of one year, written reports, describing the methodology and findings of quality control reviews performed by an independent third party regarding Bogman's compliance with applicable HUD Handbooks and Mortgagee Letters, including compliance with servicing and loss mitigation requirements.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Bogman (a) failed to properly establish and implement a Quality Control Plan; (b) used the services of a third party servicer that was not an approved HUD/FHA approved mortgagee; (c) failed to properly service defaulted FHA insured loans and failed to ensure its foreclosure management review checklist was in compliance with HUD/FHA requirements; and (d) failed to use the proper loss mitigation techniques with borrowers.

4. City First Mortgage Services LLC., Bountiful, UT [Docket No. 15–1657–MR]

Action: On June 30, 2015, the Board issued a letter of reprimand to City First Mortgage Services, LLC., ("CFMS"), and also required CFMS to pay a civil money penalty in the amount of $40,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: CFMS (a) failed to comply with Generally Accepted Accounting Principles; (b) falsely certified to HUD/FHA that it had complied with all HUF/FHA regulations in its June 25, 2014 annual certification; (c) failed to promptly notify HUD/FHA it had entered into a consent order with the State of Illinois Department of Financial and Professional Regulation, Division of Banking and paid a $2,500 fine to settle allegations that it allowed an unlicensed office, branch manager and loan originator to conduct business without the proper licenses or sponsorship from CFMS; and (d) failed to timely notify HUD/FHA that it had entered into a settlement agreement with the State of California.

5. Fifth Third Bank, Cincinnati, OH [Docket No. 16–1634–MR]

Action: On September 15, 2015, the Board voted to accept a proposed settlement between the United States and Fifth Third Bank ("FTB"). Pursuant to the terms of the Settlement, FTB agreed to: (a) Pay a total of $85 million to resolve potential liability under the False Claims Act in connection with 519 loans that went to claim; (b) indemnify HUD/FHA for the life of the loan on all losses associated with 920 loans; (c) make an administrative payment totaling $ 2,034,000; and (d) make an administrative payment to HUD/FHA of $441,000.

Cause: The Board took this action based on (a) FTB's own self-reporting that it had not fully complied with its obligation to notify HUD/FHA of early payment defaults in loans that contained significant deficiencies, and (b) an investigation by the U.S. Attorney's Office for the Southern District of New York based on a *Qui Tam* action.

6. First Liberty Financial Group, Louisville, KY [Docket No. 15–1500–MR]

Action: On September 11, 2015, the Board entered into a Settlement Agreement with First Liberty Financial Group, ("FLFG") that required FLFG to pay a civil money penalty in the amount of $66,700 without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: FLFG (a) failed to establish and implemented a Quality Control Plan in accordance with HUD/FHA requirements; (b) failed to ensure it conducted reviews of loans which went into default within the first six months of repayment; (c) failed to evidence that it had conducted a pre-insurance review for loans insured under the Lender Insurance Program; (d) failed to comply with HUD/FHA rules, regulations and guidelines in originating and underwriting FHA insured loans; (e) failed to sign the certification on page 4 of the final HUD form 92900–A for 26 loans; (f) failed to comply with HUD/FHA documentation requirements for the borrowers' source of funds for one loan; (g) failed to timely remit Mortgage Insurance Premiums as required by HUD/FHA; and (h) failed to notify HUD/FHA of a business change.

7. Infinity Home Mortgage Company, Inc. Cherry Hill, NJ [Docket No. 14–1641–MR]

Action: On November 10, 2014, the Board issued a Notice of Administrative Action permanently withdrawing the FHA approval of Infinity Home Mortgage Company, Inc., ("IHMC").

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: IHMC (a) failed to establish and implemented a Quality Control Plan in accordance with HUD/FHA requirements; (b) failed to complete Quality Control reviews timely and respond to Quality Control review findings reported by HUD/FHA; (c) failed to ensure it conducted early payment default Quality Control reviews in accordance with HUD/FHA requirements; (d) failed to ensure borrowers were eligible for FHA-insured financing; (e) failed to properly document the borrowers' source/adequacy of funds used for down payments and/or closing costs; (f) failed to properly document the income utilized to qualify borrowers; (g) failed to resolve discrepancies and/or conflicting information prior to submitting loans for FHA approval and ensure outstanding judgments were satisfied; (h) failed to ensure the Uniform Residential Appraisal Report supported the final value conclusion and/or failed to ensure the health and safety of the subject property; and (i) failed to comply with HUD/FHA documentation requirements.

8. Integrity Home Loans of Central Florida, Lake Mary, FL [Docket No. 14–1727–MR]

Action: On March 19, 2015, the Board voted to withdraw the FHA approval of Integrity Home Loans of Central Florida, ("IHL") for a period of one year. On May 18, 2015, the Board entered into a settlement agreement with IHL that required IHL to pay a civil money penalty in the amount of $3,000 and abide by the Board's withdrawal of IHL's FHA approval.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: IHL operated a branch office in violation of HUD/FHA requirements.

9. MetLife Bank, N.A., Morristown, NJ [Docket No.16–1631–MR]

Action: On February 24, 2015, the Board voted to accept the terms of a settlement agreement between the United States of America, ("USA") and MetLife Bank, N.A., ("MLB") that required MLB to pay $123,500,000 to the USA. As part of the settlement, the Board released MLH from liability for any civil money penalty due to improper origination of FHA-insured loans for which FHA paid a claim for mortgage insurance through August 25, 2014. The settlement expressly excluded streamline refinances and Home Equity Conversion Mortgage loans from the release.

Cause: The Board took this action in order to resolve allegations that MetLife failed to properly underwrite FHA-insured loans that resulted in claims being submitted to FHA through August 25, 2014.

10. Putnam Bank, Putnam, CT [Docket No. 15–1504–MR]

Action: On June 4, 2015, the Board entered into a settlement agreement with Putnam Bank, ("PB") that required PB to pay a civil money penalty in the amount of $5,000.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: PB failed to obtain, prior to closing, documentation of the terms of a $5,000 loan from the borrower's father that the borrower used for the down payment.

11. Residential Finance Corporation, Columbus, OH [Docket No. 14–1708–MR]

Action: On April 28, 2015, the Board issued a Notice of Administrative Action to Residential Finance Corporation ("RFC") withdrawing RFC's FHA approval for a period of one year.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: RFC (a) failed to ensure the borrower made the minimum required investment; (b) failed to document a borrower's funds to close on a loan; (c) failed to resolve questions concerning a borrower's delinquent federal debt; and (d) failed to properly calculate a borrower's income used to qualify the borrower.

12. Reverse Mortgage Solutions, Inc., Spring, TX [Docket No. 16–1632–MR]

Action: On May 21, 2015, the Board voted to accept a settlement agreement between Walter Investment Management Corporation and its subsidiary Reverse Mortgage Solutions, Inc. ("RMSI") and the United States that required RMSI to pay the United States the amount of $26,250,000.00. Pursuant to the terms of the settlement, the Board settled potential administrative actions by the Board against RMSI in connection with insurance claims filed from August 13, 2009 to December 15, 2014 for loans insured under the Home Equity Conversion ("HECM") Program.

Cause: The Board took this action based on a complaint filed under the False Claims Act that alleged that RMSI had failed to self-curtail debenture interest with respect to HECM claims that were filed with HUD, and that a subsidiary of RMSI acted as the real estate agent for the disposition of the HECM properties after foreclosure, which resulted in the payment of commissions in violation of the anti-referral fee prohibitions of the Real Estate Settlement Procedures Act.

13. Sahara Mortgage Corporation, Las Vegas, NV [Docket No. 15–1502–MR]

Action: On March 30, 2015, the Board issued a Notice of Administrative Action withdrawing the FHA approval of Sahara Mortgage Corporation, (“SMC”) for a period of one year.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: SMC failed to pay HUD in accordance with SMC’s indemnification agreements with HUD/FHA.

14. USLending & Finance, LTD, Downers Grove, IL [Docket No. 15–1505–MR]

Action: On July 1, 2015, the Board entered into an agreement with USLending &Finance, LTD (“USLending”) that required USLending to pay $18,500 without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: USLending (a) failed to provide documentation it had implemented a Quality Control Plan in accordance with HUD/FHA requirements; and (b) failed to ensure its officers and employees were exclusively employed by USLending.

II. Lenders That Failed To Timely Meet Requirements for Annual Recertification of HUD/FHA Approval

Action: The Board entered into settlement agreements with the lenders listed below, which required the lender to pay a civil money penalty without admitting fault or liability.

Cause: The Board took this action based upon allegations that the lenders listed below failed to comply with the Department’s annual recertification requirements in a timely manner.

1. BCB Community Bank, Bayonne, NJ ($16,000) *[Docket No.15–1666–MRT]*
2. Bondcorp Realty Services, Inc., Newport Beach, CA ($4,250) *[Docket No.15–1859 MRT]*
3. Case Credit Union, Lansing, MI ($3,500) *[Docket No.15–1608–MRT]*
4. Citizens Trust Bank, Atlanta, GA ($3,500) *[Docket No.15–1760–MRT]*
5. City National of New Jersey, Newark, NJ ($3,500) *[Docket No.15–1624–MRT]*
6. Darien Rowayton Bank, Darien, CT ($3,500) *[Docket No.15–1603–MRT]*
7. First Key Mortgage, LLC, Rye Brooke, NY ($3,500) *[Docket No.14–1706–MRT]*
8. Lone Star National Bank, McAllen, TX ($3,500) *[Docket No.14–1569–MRT]*
9. Members Cooperative Credit Union, Cloquet, MN ($3,500) *[Docket No.15–1600–MRT]*
10. Northland Financial, Steele, ND ($3,500) *[Docket No.15–1614–MRT]*
11. Prairie Bank of Kansas fka Farmers National Bank, Stafford, KS ($3,500) *[Docket No.14–1661–MRT]*
12. Urban Fulfillment Services, LLC f/k/a Prodovis Mortgage, LLC, Broomfield, CO ($3,500) *[Docket No.13–1482–MRT]*
13. Progressive Bank, Monroe, LA ($3,500) *[Docket No.15–1591–MRT]*
14. Teamsters Credit Union, Detroit, MI ($3,500) *[Docket No.15–1612–MRT]*
15. Valley Exchange Bank of Lennox, Lennox, SD ($3,500) *[Docket No.15–1606–MRT]*

III. Lenders That Failed To Meet Requirements for Annual Recertification of HUD/FHA Approval

Action: The Board voted to withdraw the FHA approval of each of the lenders listed below for a period of one (1) year.

Cause: The Board took this action based upon allegations that the lenders listed below were not in compliance with the Department’s annual recertification requirements.

1. Acadia Federal Savings Bank, Falls Church, VA *[Docket No.15–1754–MRT]*
2. Approved Home Lending, Inc., Miami FL *[Docket No.15–1509–MRT]*
3. Blufi Lending Corporation, San Diego, CA *[Docket No.15–1757–MRT]*
4. Central State Bank., Quincy, IL *[Docket No.15–1759–MRT]*
5. Classic Home Financial, Inc., Houston, TX *[Docket No.15–1762–MRT]*
6. Connecticut River Bank., Charlestown, NH *[Docket No.15–1764–MRT]*
7. Consumers Mortgage Corp, Middletown, NJ *[Docket No.15–1765–MRT]*
8. Denver Mortgage Company, Greenwood Village, CO *[Docket No.15–1766–MRT]*
9. Dominion Residential Mortgage, LLC., Fairfax, VA *[Docket No.15–1767–MRT]*
10. First Mutual Corporation, Cherry Hill, NJ *[Docket No.13–1768–MRT]*
11. Firstrust Mortgage, Inc., Overland Park, KS *[Docket No.15–1627–MRT]*
12. Franklin Credit Management Corporation, Jersey City, NJ *[Docket No.14–1702–MRT]*
13. Funding Source, LLC., Syracuse, NY *[Docket No.15–1771–MRT]*
14. GMS Funding LLC., West Columbia, SC *[Docket No.15–1722–MRT]*
15. Golden Pacific Bank, Sacramento, CA *[Docket No.15–1773–MRT]*
16. Guardian Credit Union, West Allis, WI *[Docket No.15–1634–MRT]*
17. Homefirst Mortgage LLC., Jackson, MS *[Docket No.15–1522–MRT]*
18. Jayco Capital Group, Inc., Irvine, CA *[Docket No.15–1775–MRT]*
19. Landmark Bank NA, Columbia, MO *[Docket No.14–1551–MRT]*
20. Liberty Capital Financial, Damascus, MD *[Docket No.15–1776–MRT]*
21. Merchants & Planters Bank, Boilvar, TN *[Docket No.15–1777–MRT]*
22. Mortgage Bank of California, Manhattan Beach, CA *[Docket No.15–1778–MRT]*
23. Prime Bank, Edmond, OK *[Docket No.15–1621–MRT]*
24. Retreat Capital Management Inc., Irving, TX *[Docket No.15–1779–MRT]*
25. Rocky Mountain Bank, Jackson, WY *[Docket No.15–1780–MRT]*
26. South Valley Bank and Trust, Klamath Falls, OR *[Docket No.15–1651–MRT]*
27. Spectra Funding Inc., Carlsbad, CA *[Docket No.15–1782–MRT]*
28. StellarOne Bank, Christianburg, VA *[Docket No.15–1783–MRT]*
29. Steward Investments, Inc., Carlsbad, CA *[Docket No.15–1784–MRT]*
30. The Cadle Company, Newton Falls, OH *[Docket No.14–1648–MRT]*
31. The Lending Company Inc., Phoenix, AZ *[Docket No.15–1787–MRT]*
32. Washington Savings Association, Philadelphia, PA *[Docket No.15–1789–MRT]*
33. Workers Credit Union, Fitchburg, MA *[Docket No.15–1510–MRT]*

Date: May 3, 2016.

Edward L. Golding,

Principal Deputy Assistant Secretary, Chairman, Mortgagee Review Board.

[FR Doc. 2016–11045 Filed 5–10–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–35]

30-Day Notice of Proposed Information Collection: Home Equity Conversion Mortgage Client Session Evaluation

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* June 10, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on January 25, 2016 at 81 FR 4059.

A. Overview of Information Collection

Title of Information Collection: Home Equity Conversion Mortgage Counseling Client Session Evaluation.

OMB Approval Number: 2502–0585.

Type of Request: Extension without change of a currently approved collection.

Form Number: HUD–92911.

Description of the need for the information and proposed use: Tool to determine quality of client counseling sessions as part of periodic agency performance reviews.

Respondents: Individuals or Household.

Estimated Number of Respondents: 300.

Estimated Number of Responses: 250.

Frequency of Response: 1.

Average Hours per Response: .06.

Total Estimated Burden Hours: 50.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 5, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–11134 Filed 5–10–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–36]

30-Day Notice of Proposed Information Collection: Border Community Capital Initiative and Semi-Annual Reporting

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for renewal of the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 10, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for renewal of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 4, 2016 at 81 FR 11584.

A. Overview of Information Collection

Title of Information Collection: Border Community Capital Initiative Application and Semi-Annual Reporting.

OMB Control Number: 2506–0196.

Type of Request: Extension without change of a currently approved collection.

Form Number: OMB 83–1 SF 424; HUD 424CB; HUD 424–CBW; SF–LLL; HUD 2880; HUD 2990; HUD 2991; HUD 2993; HUD 2994A; HUD 27061; and HUD 27300.

Description of the need for the information and proposed use: The Border Community Capital Initiative ("Border Initiative") is a collaborative effort among three federal agencies—the Department of Housing and Urban Development (HUD), the Department of the Treasury—Community Development Financial Institutions Fund (CDFI Fund) and the Department of Agriculture—Rural Development (USDA–RD). The Initiative's goal is to increase access to capital for affordable housing, business lending and community facilities in the chronically underserved and undercapitalized U.S./Mexico border region. Specifically, it will provide direct investment and technical assistance to community development lending and investing institutions that focus on affordable housing, small business and community facilities to benefit the residents of colonias.

HUD, USDA–RD and the CDFI Fund have all identified the lack of capacity among organizations serving the colonias and similar persistent poverty communities as a limiting factor in the effectiveness of federal programs. Inconsistent availability of limited public funding in any one region or community plays a role in this, because organizations specializing in affordable housing, small business support and community facilities cannot sustain themselves and grow. All of the agencies recognize that the targeted border communities and populations receive insufficient services because they lack organizations with the capacity to effectively respond to community needs. Conversely, higher-capacity organizations working along the border consistently cite lack of access to capital as a major barrier to expansion.

The Border Initiative focuses on improving colonias communities, creating asset building opportunities for colonias residents by helping local financial institutions improve their capacity to raise capital, and to lend and invest it in their communities. Strengthening local community development lenders and investors will also widen the channels through which larger private institutions and federal agencies can reach potential homeowners, renters, business owners, facilities operators and service providers who need their support.

The list of federally recognized Indian tribes can be found in the notice published by the Department of the Interior on Friday, January 29, 2016 (**Federal Register**/Vol. 81, **Federal Register**/Vol. 81, No. 19.

Respondents (*i.e.* affected public): Public.

Estimated Number of Respondents: 50.

Estimated Number of Responses: 50.

Frequency of Response: Once.

Average Hours per Response: .75.

Total Estimated Burdens: 37.50.

	Estimated number of respondents	Annual responses	Estimated number of responses	Burden per response	Total annual hours	Hourly rate **	Burden cost per instrument
HUD–424CB	50	1	50	.20	10.00	25.00	250.00
HUD–424CBW	50	1	50	.20	10.00	25.00	250.00
HUD–2880	50	1	50	.05	2.50	25.00	62.50
HUD–2990	50	1	50	.05	2.50	25.00	62.50
HUD–2991	50	1	50	.05	2.50	25.00	62.50
HUD–2993	50	1	50	.05	2.50	25.00	62.50
HUD–2994A	50	1	50	.05	2.50	25.00	62.50
HUD–27061	50	1	50	.05	2.50	25.00	62.50
HUD–27300	50	1	50	.05	2.50	25.00	62.50
Total			50	.75	37.50		$937.50

Annualized cost @$25.00.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 5, 2016.

Anna P. Guido,

Department Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 2016–11135 Filed 5–10–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2016–N082; FXFR1334088TWG0W4–123–FF08EACT00]

Trinity River Adaptive Management Working Group; Public Meeting, Teleconference and Web-Based Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Trinity River Adaptive Management Working Group (TAMWG). The TAMWG is a Federal advisory committee that affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight.

DATES: *Public meeting, Teleconference, and Web-based meeting:* TAMWG will meet from 9:30 a.m. to 4:30 p.m. Pacific Time on Tuesday, May 24, 2016, and from 9 a.m. to 2:30 p.m. Pacific Time on Wednesday, May 25, 2016. *Submitting Information:* If you wish to submit written information or questions for the TAMWG to consider during the meeting, you must contact Elizabeth Hadley (**FOR FURTHER INFORMATION CONTACT**) no later than May 17, 2016.

ADDRESSES: *Meeting:* The meeting will be held at the Trinity River Restoration Program Office, 1313 South Main Street, Weaverville, CA 96093. *Teleconference:* Call In Number: 866–715–1246, Participant Pass Code: 4251781. *Web-based meeting: http://www.mymeetings.com/nc/*

join.php?sigKey=mymeetings&i=442336293&p=&t=c.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polos, by mail at U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; by telephone at 707–822–7201; or by email at *joe_polos@fws.gov;* or Elizabeth W. Hadley, Redding Electric Utility, by mail at 777 Cypress Avenue, Redding, CA 96001; by telephone at 530–339–7308; or by email at *ehadley@reupower.com.* Individuals with a disability may request an accommodation by sending an email to either point of contact.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Trinity River Adaptive Management Working Group (TAMWG) will hold a meeting. The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight.

Meeting Agenda

- Designated Federal Officer (DFO) update;
- TMC Chair update;
- Trinity River Restoration Program (TRRP) Managers reports;
- Trinity Brown Trout Study;
- TMC Current issues;
- Upper Trinity River Tributary Access Survey;
- FY 17 Budget;
- Water Management/Temperature Management;
- Public comment; and
- Decision Support System.

The final agenda will be posted on the Internet at *http://www.fws.gov/arcata.*

Public Input

Interested members of the public may submit relevant information or questions for the TAMWG to consider during the meeting. Written statements must be received by the date listed in **DATES**, so that the information may be available to the TAMWG for their consideration prior to this meeting. Written statements must be supplied to Elizabeth Hadley in one of the following formats: One hard copy with original signature, one electronic copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, PowerPoint, or rich text file).

Registered speakers who wish to expand on their oral statements, or those who wished to speak but could not be accommodated on the agenda, may submit written statements to Elizabeth Hadley up to 7 days after the meeting.

Meeting Minutes

Summary minutes of the meeting will be maintained by Elizabeth Hadley (see **FOR FURTHER INFORMATION CONTACT**). The minutes will be available for public inspection within 14 days after the meeting, and will be posted on the TAMWG Web site at *http://www.fws.gov/arcata.*

Dated: May 4, 2016.

Joseph C. Polos,

Supervisory Fish Biologist, Arcata Fish and Wildlife Office, Arcata, California.

[FR Doc. 2016–11061 Filed 5–10–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2016–N060]; [FXES11130900000C6–123–FF09E30000]

Endangered and Threatened Wildlife and Plants; Workshop To Review the Habitat-Based Recovery Criteria for the Grizzly Bear in the Northern Continental Divide Ecosystem

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public workshop.

SUMMARY: The Fish and Wildlife Service hereby gives notice that a public workshop will be held to review the habitat-based recovery criteria for the grizzly bear in the Northern Continental Divide Ecosystem (NCDE). The workshop will allow scientists and other interested parties the opportunity to submit oral or written comments.

DATES: The public workshop will be held from 1 p.m. to 4 p.m. and 6 p.m. to 8 p.m. on July 7, 2016.

ADDRESSES: The public workshop will be held at the Double Tree Hotel, 100 Madison Street, Missoula, Montana 59812. Comment and materials concerning the workshop should be sent to the Grizzly Bear Recovery Office, U.S. Fish and Wildlife Service, University Hall, Room 309, Missoula, MT 59812. Comments and materials received will be available for inspection, by appointment, during normal business hours at the Service Grizzly Bear Recovery Office address.

FOR FURTHER INFORMATION CONTACT: The Grizzly Bear Recovery Office (see **ADDRESSES**), at 406–243–4903 (phone) or 406–329–3212 (fax).

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service hereby gives notice that a public workshop will be held to review the habitat-based recovery criteria for the grizzly bear (*Ursus arctos horribilis*) in the Northern Continental Divide Ecosystem (NCDE). The workshop will allow scientists and other interested parties the opportunity to submit oral or written comments.

Background

The grizzly bear is listed as a threatened species in the 48 contiguous States. The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. A revised Grizzly Bear Recovery Plan was approved by the Fish and Wildlife Service (Service) on September 10, 1993. The 1993 Recovery Plan identifies distinct Recovery Zones and unique recovery criteria for six different grizzly bear populations, including the NCDE, with the intent that these individual populations would be delisted as they each achieve recovery (U.S. Fish and Wildlife Service 1993, pp. ii, 33–34). One important component of recovery plans is the inclusion of objective, measurable recovery criteria. The habitat-based recovery criteria will be developed in part by taking into account the oral and written comments received at the habitat-based recovery criteria workshop and written comments received. The final habitat-based recovery criteria will be appended to the 1993 Grizzly Bear Recovery Plan for the NCDE and incorporated into the NCDE Grizzly Bear Conservation Strategy. The Recovery Plan sets out guidance for the Service, States, and other partners on methods to minimize threats to grizzly bears and criteria that may be used to measure if recovery has been achieved while the Conservation Strategy is the guide to post-delisting management.

The Service will hold a public workshop seeking input and ideas on objective, measurable habitat-based recovery criteria in the Draft NCDE Grizzly Bear Conservation Strategy (U.S. Fish and Wildlife Service 2013, available online at *http://www.fws.gov/mountain-prairie/es/grizzlyBear.php*), and the Draft Environmental Impact Statement for the NCDE National Forests (USDA Forest Service 2016, available online at *http://www.fs.usda.gov/detailfull/flathead/home/?cid=stelprdb5422786&width=full*). We seek ideas and information about characteristics of habitat necessary to support a recovered population of grizzly bears and habitat parameters that can be measured and directly related to grizzly bear population health. At the workshop, the Service also wants to obtain information and comments on methods for monitoring the habitat-based recovery criteria. Emphasis of this workshop will be on the habitat needs of the NCDE grizzly bear population.

The Service seeks the input of scientists, the public, and interested organizations at the workshop. The workshop will be held in Missoula, Montana, on July 7, 2016 (see **ADDRESSES**). The workshop will be held from 1 p.m. to 8 p.m., with one break (see **DATES**). Participants are invited to present information in oral and written form. All comments presented orally should also be submitted in writing to facilitate review of these comments. Those wishing to present information or comments orally at the workshop are asked to contact the Grizzly Bear Recovery Office (see **FOR FURTHER INFORMATION CONTACT**) so that scheduling of oral presentations can be arranged in advance. Anyone wishing to provide information or comments, but unable to attend the workshop, should send the information or comments to the Grizzly Bear Recovery Office (see **ADDRESSES**) within 15 calendar days of the workshop. All information and comments previously or subsequently received within the applicable submission period will be considered during the development of the habitat-based recovery criteria.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 6, 2016.

Matt Hogan,

Deputy Regional Director, Mountain-Prairie Region, Denver, Colorado.

[FR Doc. 2016–11057 Filed 5–10–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20982; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Oregon Museum of Natural and Cultural History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Lineal descendants or representatives of any Indian tribe not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Oregon Museum of Natural and Cultural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants or Indian tribes stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Oregon Museum of Natural and Cultural History at the address in this notice by June 10, 2016.

ADDRESSES: Dr. Pamela Endzweig, Director of Collections, Museum of Natural and Cultural History, 1224 University of Oregon, Eugene, OR 97403–1224, telephone (541) 346–5120.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the University of Oregon Museum of Natural and Cultural History, Eugene, OR. The human remains and associated funerary objects were removed from the Pistol River sites, 35CU61 and 35CU62, in Curry County, Oregon, at and near the aboriginal village site of Chetlessentun.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by University of Oregon Museum of Natural and Cultural History professional staff in consultation with representatives of the Confederated Tribes of Grand Ronde Community of Oregon; the Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation); Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, Oregon; the Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon); Elk Valley Rancheria, California; and the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California).

History and Description of the Remains

In 1961, human remains representing, at minimum, 15 individuals were removed from the Pistol River site, 35CU61, in Curry County, OR, a location of the aboriginal village site of Chetlessentun, during legally authorized excavations by archeologists from the University of Oregon. No known individuals were identified. The 21 associated funerary objects include three projectile points, four projectile point fragments, one drill fragment, one worked flake, one worked bone, one worked tine, one spoon bowl, 2 glass beads, one piece of glass, one piece of wood, and 5 chipped stone flakes.

At an unknown date, human remains representing, at minimum, one individual were removed from the Raymonds Dune site, 35CU62, about 0.4 km north of Chetlessentun, in Curry County, OR, by a private individual. The human remains were donated to the Museum and accessioned in 1947. No known individual was identified. No associated funerary objects are present.

In 1942, human remains representing, at minimum, one individual, were removed by the private individual referenced above from a location described in donor records as "Pistol River Dune," and "on the slope 75′ to 100′ east of the central group of shell heaps." No further information is present. The location is assumed to be in the vicinity of the above two sites. The human remains were donated to the Museum and accessioned in 1947. No known individual was identified. No associated funerary objects are present.

Based on archeological context, the 17 individuals described above are determined to be Native American. Historical documents, ethnographic sources, and oral history indicate occupation of Chetlessentun (35CU61) by the Tututni people until 1856. Burial-associated artifacts and radiocarbon dates from archeological associations support a late pre-contact and early post-contact age of the burials from 35CU61. Site 35CU62 was occupied about 3200 years ago, based on radiocarbon-dated house remains and associated projectile points styles.

Based on provenience, the Native American human remains are reasonably believed to be affiliated with the Coquille Indian Tribe and the Confederated Tribes of Siletz Indians, Oregon.

Determinations made by the University of Oregon Museum of Natural and Cultural History:

Officials of the University of Oregon Museum of Natural and Cultural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 17 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 21 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Coquille Indian Tribe and the Confederated Tribes of Siletz Indians, Oregon.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Pamela Endzweig, Director of Collections, University of Oregon Museum of Natural and Cultural History, 1224 University of Oregon, Eugene, OR 97403–1224, telephone (541) 346–5120, by June 10, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Coquille Indian Tribe and the Confederated Tribes of Siletz Indians, Oregon may proceed.

The University of Oregon Museum of Natural and Cultural History is responsible for notifying the Confederated Tribes of Grand Ronde Community of Oregon; the Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation); Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians, Oregon; the Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon); Elk Valley Rancheria, California; and the Tolowa Dee-ni' Nation (previously listed as the Smith River Rancheria, California) that this notice has been published.

Dated: April 28, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–11089 Filed 5–10–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20961; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: History Colorado, formerly Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Colorado, formerly Colorado Historical Society, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to History Colorado. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to History Colorado at the address in this notice by June 10, 2016.

ADDRESSES: Sheila Goff, NAGPRA Liaison, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of History Colorado, Denver, CO. One set of human remains was relinquished to the County Coroner in Fremont County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by History Colorado professional staff in consultation with representatives of the Arapaho Tribe of the Wind River Reservation, Wyoming; Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Tribe of Montana; Comanche Nation, Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Pawnee Nation of Oklahoma; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Santa Clara, New Mexico; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Shoshone Tribe of the Wind River Reservation, Wyoming; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

The Apache Tribe of Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Fort Sill Apache Tribe of Oklahoma; Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); and Zuni Tribe of the Zuni Reservation, New

Mexico were invited to consult but did not participate. Hereafter all tribes listed above are referred to as "The Consulted and Invited Tribes."

History and Description of the Remains

On November 12, 2015, the Fremont County Coroner took possession of one set of human remains from a private citizen who indicated they had been removed by her in about 1980 from a river bank on the Arkansas River near Coaldale, CO. After ruling out forensic interest the Coroner notified the Office of the State Archaeologist (OSAC), who took possession of the human remains in January 2016. The individual is an adult represented by a mandible and a small number of post-cranial elements and is identified as OAHP 312. Osteological analysis determined that the human remains are of Native American ancestry. No known individuals were identified. No associated funerary objects are present.

History Colorado, in partnership with the Colorado Commission of Indian Affairs, Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah, conducted tribal consultations among the tribes with ancestral ties to the State of Colorado to develop the process for disposition of culturally unidentifiable Native American human remains and associated funerary objects originating from inadvertent discoveries on Colorado State and private lands. As a result of the consultation, a process was developed, *Process for Consultation, Transfer, and Reburial of Culturally Unidentifiable Native American Human Remains and Associated Funerary Objects Originating From Inadvertent Discoveries on Colorado State and Private Lands*, (2008, unpublished, on file with the Colorado Office of Archaeology and Historic Preservation). The Consulted and Invited Tribes are those who have expressed their wishes to be notified of discoveries in the Great Basin Consultation Region as established by the *Process*, where these individuals originated.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. On November 3–4, 2006, the *Process* was presented to the Review Committee for consideration. A January 8, 2007, letter on behalf of the Review Committee from the Designated Federal Officer transmitted the provisional authorization to proceed with the *Process* upon receipt of formal responses from the Jicarilla Apache Nation, New Mexico, and the Kiowa Indian Tribe of Oklahoma, subject to forthcoming conditions imposed by the Secretary of the Interior. On May 15–16, 2008, the responses from the Jicarilla Apache Nation, New Mexico, and the Kiowa Indian Tribe of Oklahoma were submitted to the Review Committee. On September 23, 2008, the Assistant Secretary for Fish and Wildlife and Parks, as the designee for the Secretary of the Interior, transmitted the authorization for the disposition of culturally unidentifiable human remains according to the *Process* and NAGPRA, pending publication of a Notice of Inventory Completion in the **Federal Register.** This notice fulfills that requirement.

43 CFR 10.11 was promulgated on March 15, 2010, to provide a process for the disposition of culturally unidentifiable Native American human remains recovered from tribal or aboriginal lands as established by the final judgment of the Indian Claims Commission or U.S. Court of Claims, a treaty, Act of Congress, or Executive Order, or other authoritative governmental sources. As there is no evidence indicating that the human remains reported in this notice originated from tribal or aboriginal lands, they are eligible for disposition under the *Process.*

Determinations Made by History Colorado

Officials of History Colorado have determined that:

- Based on osteological analysis, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 43 CFR 10.11(c)(2)(ii) and the *Process,* the disposition of the human remains may be to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sheila Goff, NAGPRA Liaison, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us* by June 10, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed.

History Colorado is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: April 27, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–11091 Filed 5–10–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20967; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Michigan State Police, Jackson Post, Jackson, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Michigan State Police, Jackson Post MSP13 has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Michigan State Police, Jackson Post. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Michigan State Police, Jackson Post at the address in this notice by June 10, 2016.

ADDRESSES: D/Sgt. Cyndee Gochanour, Michigan State Police, Jackson Post #13, 3401 Cooper Street, Jackson, MI 49201, telephone (517) 780–4580, email *GochanourC@michigan.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Michigan State Police, Jackson Post. The human remains were removed from South Meridian Road, Pittsford Township, Hillsdale County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Michigan State University Anthropology Department on behalf of the Michigan State Police, Jackson Post, in consultation with the Citizen Potawatomi Nation, Oklahoma; Little Traverse Bay Bands of Odawa Indians, Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc); and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

The following tribes were invited to consult, but did not participate: Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; St. Croix Chippewa Indians of Wisconsin; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians (previously listed as the Seneca Nation of New York); Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma); Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York); Turtle Mountain Band of Chippewa Indians of North Dakota; and the Wyandotte Nation (all tribes listed in this section are hereafter referred to as "The Consulted and Invited Tribes").

History and Description of the Remains

On November 19, 2015, human remains representing, at minimum, one individual were removed from a quarry located on South Meridian Road, Pittsford Township, Hillsdale County, MI, while a quarry worker was excavating gravel. The quarry worker contacted his boss and the landowner, who in turn contacted the Michigan State Police, Jackson Post (complaint 13–7550–15). The Michigan State University, Anthropology Department completed a preliminary analysis of the human remains through photographs sent by cell phone. The human remains were believed to be Native American. Michigan State University, Anthropology Department arrived at the venue and assisted in the recovery of additional skeletal remains. Michigan State University, Anthropology Department took possession of the human remains for further analysis and confirmed the human remains were one Native American male. No known individuals were identified. No associated funerary objects are present.

The human remains are consistent with that of a prehistoric Great Lake Native American, gracile male, suggested age range of 14–23. No lines of evidence for present-day cultural affiliation where identifiable. The skeletal elements present include: A mostly complete cranium, the proximal half of a right femur, the distal half of a right femur (both elements are consistent and may have fit together prior to taphonomic changes), a distal half of the left humerus, two left fibular fragments, T6 through T12, and several small cranial fragments.

Determinations Made by the Michigan State Police, Jackson Post

Officials of the Michigan State Police, Jackson post have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on the report received from Michigan State University Anthropology Department.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgement of Indian Claims Commission or the Court of Federal Claims, or Treaties, Acts of Congress, or Executive Orders the land from which the Native American human remains were removed is the aboriginal land of The Consulted and Invited Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Consulted and Invited Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to: D/Sgt. Cyndee Gochanour, Michigan State Police, Jackson Post #13, 3401 Cooper Street, Jackson, MI 49201, telephone (517) 780–4580, email *GochanourC@michigan.gov,* by June 10, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains may be to The Consulted and Invited Tribes.

The Michigan State Police, Jackson Post is responsible for notifying The Consulted and Invited Tribes that this notice has published.

Dated: April 27, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–11086 Filed 5–10–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20964; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Davis, Davis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of California, Davis (UC Davis) has completed an inventory of human remains housed in the UC Davis Museum of Wildlife and Fish Biology, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the UC Davis. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of California, Davis at the address in this notice by June 10, 2016.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 433 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of California, Davis, Davis, CA. The human remains were removed from Barrow, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by UC, Davis professional staff in consultation with representatives of the Native Village of Barrow Inupiat Traditional Government.

History and Description of the Remains

In 1951, human remains representing, at minimum, one individual were removed from Point Barrow in Barrow, AK. The human remains were collected by Henry Everett Childs, Jr., a graduate student at University of California, Berkeley at the time. In 2014, the human remains were identified in the collections of the UC Davis, Museum of Wildlife and Fish Biology and reported to the NAGPRA Project. No known individuals were identified. No associated funerary objects were present.

The human remains were collected during a biological field expedition. The human remains have been determined to be Native American based on antiquity, dental wear patterns, and historical and archeological information. Geographic, historical, archeological, and biological information suggest continuity between human remains from Point Barrow and contemporary Inupiat people that are present day members of the Native Village of Barrow Inupiat Traditional Government.

The human remains described above lack precise context information. However, there are several known archeological sites in the Point Barrow area including Nuvuk (Nuwuk), Birnirk, Kugok, Utqiaġvik, and Walakpa that have been extensively excavated, and provide related information to assist with interpretation. Collectively the sites in the Point Barrow area represent Birnirk, Thule, Historical and Modern Inupiat archeological phases. Radiocarbon dates indicate an essentially continuous occupation of the Nuvuk site. Based on the state of preservation, the human remains described above date to the last 1000 years, but likely date to the late Prehistoric–early Historic period (1730s 1850s B.C.).

The historic village of Nuvuk was occupied at the time of Euroamerican contact (1826) and later abandoned. Some elders now living in Barrow were born and raised at Nuvuk. Recent ancient mitochondrial DNA analysis suggests some genetic continuity between Paleoeskimo (*e.g.*, Arctic Small Tool tradition) and contemporary Inupiat people of the region. However, the Inupiat in the North Slope of Alaska have demonstrated cultural and genetic ties to their ancestral Thule and Birnirk cultures. Based on this information, the human remains described in this Notice are determined to be culturally affiliated with Inupiat of the Point Barrow area, represented today by the Native Village of Barrow Inupiat Traditional Government.

Determinations Made by the University of California, Davis

Officials at UC Davis have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Native Village of Barrow Inupiat Traditional Government.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Megon Noble, NAGPRA Project Manager, University of California, Davis, 433 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530)752–8501, email *mnoble@ucdavis.edu*, by June 10, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to Native Village of Barrow Inupiat Traditional Government may proceed.

UC Davis is responsible for notifying the Native Village of Barrow Inupiat Traditional Government that this notice has been published.

Dated: April 27, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–11093 Filed 5–10–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20962; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Davis, Davis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of California, Davis (UC Davis), has completed an inventory of human remains housed in the UC Davis Museum of Wildlife and Fish Biology, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to UC Davis. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to UC Davis at the address in this notice by June 10, 2016.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 433 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the UC Davis, Davis, CA. The human remains were removed from Yolo County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by UC Davis professional staff in consultation with representatives of the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cortina Indian Rancheria (previously listed as the Cortina Indian Rancheria of Wintun Indians of California); and the Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California).

History and Description of the Remains

Sometime before 1940, human remains representing, at minimum, three individuals were removed from site CA–YOL–118 in downtown Davis in Yolo County, CA. The human remains were collected by F.M. Hayes, and later donated by Mrs. F. Griffin to the UC Davis Zoology Department. The Zoology Department later became part of the College of Biological Sciences. The collections of the College of Biological Sciences were later transferred to the UC Davis Museum of Wildlife and Fish Biology within the Department of Wildlife, Fish, and Conservation Biology. No known individuals were identified. No associated funerary objects are present.

The human remains have been determined to be Native American based on dental wear patterns and the archeological context of the site. The human remains were not removed as a part of a systematic excavation; however, multiple subsequent archeological excavations at site CA–YOL–118 and surrounding sites yielded relevant information. The human remains are reasonably believed to date to Phase 2 of the Late Period (A.D. 1520–1770) or to the later Historic/Mission Period based on the presence of temporally diagnostic artifacts including clam shell disc beads, glass beads, and *Olivella* H series beads, as well as radiocarbon dating. Archeological and linguistic models suggest individuals of southern Wintun or Patwin descent were present at site CA–YOL–118 during the Late and Historic Periods. The human remains described in this Notice are determined to be culturally affiliated with southern Wintun or Patwin, represented by the present day Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cortina Indian Rancheria (previously listed as the Cortina Indian Rancheria of Wintun Indians of California); and the Yocha DeHe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California).

Determinations Made by the University of California, Davis

Officials of the University of California, Davis have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cortina Indian Rancheria (previously listed as the Cortina Indian Rancheria of Wintun Indians of California); and the Yocha DeHe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California).

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Megon Noble, NAGPRA Project Manager, University of California, Davis, 433 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu,* by June 10, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cortina Indian Rancheria (previously listed as the Cortina Indian Rancheria of Wintun Indians of California); and the Yocha DeHe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California) may proceed.

UC Davis is responsible for notifying Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Cortina Indian Rancheria (previously listed as the Cortina Indian Rancheria of Wintun Indians of California); and the Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California) that this notice has been published.

Dated: April 27, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–11092 Filed 5–10–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20979; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the U.S. Department of Defense, Department of the Army, Fort Benning, GA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Defense, Department of the Army, Fort Benning, GA has corrected an inventory of human remains and associated funerary objects, published in two Notices of Inventory Completion in the **Federal Register** on August 29, 2002, and August 31, 2015. This notice corrects the minimum number of individuals and the number of associated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request U.S. Army, Fort Benning, GA. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the U.S. Army, Fort Benning, GA at the address in this notice by June 10, 2016.

ADDRESSES: Dr. Christopher E. Hamilton, Coordinator for Native American Affairs, 6500 Meloy Drive, Room 309, Fort Benning, GA 31905, telephone (706) 545–4211, email *Christopher.e.hamilton.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the U.S. Army, Fort Benning, GA. The human remains and associated funerary objects were removed from Russell County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (67 FR 55426–55428, August 29, 2002) and the number of associated funerary objects published in Notice in the **Federal Register** (80 FR 52491–52492, August 31, 2015). In November of 2015 a routine evaluation of NAGPRA items uncovered human remains and associated funerary objects that were not previously listed on the original notice published in 2002 or on the correction published in 2015. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (67 FR 55427, August 29, 2002), column 2, paragraph 1, sentence 1, is corrected by substituting the number 13, with the number 14.

In the **Federal Register** (67 FR 55427, August 29, 2002), column 3, paragraph 2, sentence 1, is corrected by substituting the number 25, with the number 26.

In the **Federal Register** (80 FR 52491, August 31, 2015), column 3, paragraph 2, under the heading "Correction," is corrected by adding the following sentences at the end of the paragraph:

> In November 2015, additional associated funerary objects, not listed on previous notices, were found during a routine evaluation of collections. The additional associated funerary objects are 3 ceramic fragments, 91 worked shell pieces, 8 unmodified shell pieces, and 55 glass beads.

In the **Federal Register** (80 FR 52491, August 31, 2015), column 3, paragraph 3, sentence 1, under the heading "Correction," is corrected by replacing the number 1560 with the number 1717.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Christopher E. Hamilton, Coordinator for Native American Affairs, 6500 Meloy Drive, Room 309, Fort Benning, GA 31905, telephone (706) 545–4211, email *Christopher.e.hamilton.civ@mail.mil,* by June 10, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to Alabama-Coushatta Tribes of Texas; the Alabama-Quassarte Tribal Town, Oklahoma; the Chickasaw Nation; the Coushatta Tribe of Louisiana; the Kialegee Tribal Town, Oklahoma; the Miccosukee Tribe of Indians of Florida; the Muscogee (Creek) Nation, Oklahoma; the Poarch Band of Creek Indians of Alabama; the Seminole Nation of Oklahoma; the Seminole Tribe of Florida; and the Thlopthlocco Tribal Town, Oklahoma may proceed.

The U.S. Department of Defense, Department of the Army, Fort Benning, GA, is responsible for notifying the Alabama-Coushatta Tribes of Texas; the Alabama-Quassarte Tribal Town, Oklahoma; the Chickasaw Nation; the Coushatta Tribe of Louisiana; the Kialegee Tribal Town, Oklahoma; the Miccosukee Tribe of Indians of Florida; the Muscogee (Creek) Nation, Oklahoma; the Poarch Band of Creek Indians of Alabama; the Seminole Nation of Oklahoma; the Seminole Tribe of Florida; and the Thlopthlocco Tribal Town, Oklahoma that this notice has been published.

Dated: April 28, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–11087 Filed 5–10–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20924; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Pennsylvania Museum of Archaeology and Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control

of these human remains should submit a written request to the University of Pennsylvania Museum of Archaeology and Anthropology. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the University of Pennsylvania Museum of Archaeology and Anthropology at the address in this notice by June 10, 2016.

ADDRESSES: Dr. Julian Siggers, Director, University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA 19104, telephone (215) 898–4050.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA. The human remains were removed from Wayne County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of Chippewa Cree Indians of the Rocky Boy's Reservation, Montana (previously listed as the Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana); Citizen Potawatomi Nation, Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Wyandotte Nation; and with the Michigan Anishinaabek Cultural Preservation & Repatriation Alliance, a non-federally recognized entity, representing the following federally recognized tribes: Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.); Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, hereafter referred to as "The Consulted Tribes."

The following tribes were invited to consult but did not respond: Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Forest County Potawatomi Community, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Ottawa Tribe of Oklahoma; Prairie Band Potawatomi Nations (previously listed as the Prairie Band of Potawatomi Nation, Kansas); Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota, hereafter referred to as "The Invited Tribes."

History and Description of the Remains

In 1844, human remains representing, at minimum, one individual (97–606–1270) were removed from a mound located near Detroit, Wayne County, MI. The human remains were removed by Lieutenant Montgomery C. Meigs during the construction of Fort Wayne by the Army Corps of Engineers. The area selected for the Fort was the site of a "prehistoric complex of earthworks, especially burial mounds" (Grosscup 1999: 332).

The Springwells Mound Group as it is known is represented by three mounds, the mound located near the Springwells Copper Works (Michigan site number WN–3), the Fort Wayne Mound (WN–1), and the Central Mound (WN–5) located just east of Fort Wayne. Another mound directly opposite (Carsten Mound) and the Great Mound at the mouth of the Rouge River probably relate to the mounds at Springwells. These human remains likely originated from one of the three mounds located on or near Fort Wayne. The mounds date to early-late Late Woodland Periods. The human remains include the cranium and mandible of a single female estimated to be 35–50 years old.

Lt. Meigs sent the human remains to Dr. Samuel G. Morton for inclusion in his study of human crania prior to 1846. In 1853, Dr. Morton's collection, including the human remains described above, was purchased from Dr. Morton's estate and formally presented to the Academy of Natural Sciences of Philadelphia. In 1966, Dr. Morton's collection was loaned to the University of Pennsylvania Museum of Archaeology and Anthropology. In 1997, the collection was formally gifted to the University of Pennsylvania Museum. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the University of Pennsylvania Museum of Archaeology and Anthropology

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their examination by a physical anthropologist, their recovery from a known archeological site complex, museum documents, and published records.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Consulted Tribes and The Invited Tribes.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Consulted Tribes and The Invited Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Julian Siggers, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104, telephone (215) 898–4050 by June 10, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Consulted and Invited Tribes may proceed.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: April 21, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–11085 Filed 5–10–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20965; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Peabody Museum of Natural History, Yale University, New Haven, CT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Peabody Museum of Natural History, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, has determined the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Peabody Museum of Natural History. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Peabody Museum of Natural History at the address in this notice by June 10, 2016.

ADDRESSES: Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Peabody Museum of Natural History, Yale University, New Haven, CT that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item(s)

In 1899, two cultural items were removed from Yakutat Bay in Yakutat Borough, AK, by a member of the 1899 Harriman Expedition. The items were donated to the Peabody Museum of Natural History by George Bird Grinnell in 1913. The two unassociated funerary objects are two whale bone war knives.

In June 2015, representatives from the Central Council of the Tlingit and Haida Indian Tribes of Alaska identified the knives as culturally affiliated to the Tlingit people. Peabody Museum of Natural History catalog records refine this affiliation to the Yakutat Tlingit Tribe. Through consultation, members of the Yakutat Tlingit Tribe have confirmed their culturally affiliation to the knives.

Determinations Made by the Peabody Museum of Natural History

Officials of the Peabody Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the two cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Yakutat Tlingit Tribe.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Professor David Skelly, Director, Yale Peabody Museum of Natural History, P.O. Box 208118, New Haven, CT 06520–8118, telephone (203) 432–3752, by June 10, 2016. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to the Yakutat Tlingit Tribe may proceed.

The Peabody Museum of Natural History is responsible for notifying the Yakutat Tlingit Tribe and the Central Council of the Tlingit and Haida Indian Tribes of Alaska that this notice has been published.

Dated: April 27, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–11090 Filed 5–10–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20923; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The American Museum of Natural History, New York, NY; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The American Museum of Natural History has revised a Notice of Inventory Completion that was published in the **Federal Register** on January 16, 2014. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written notification to the American Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the American Museum of Natural History at the address in this notice by June 10, 2016.

ADDRESSES: Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the revision of a Notice of Inventory Completion for human remains under the control of the American Museum of Natural History, New York, NY. The human remains were removed from the Sebonac site, Shinnecock Hills, Suffolk County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a Notice of Inventory Completion in the **Federal Register** (79 FR 2876–2877, January 16, 2014). Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (79 FR 2877, January 16, 2014), column 1, paragraph 2, sentence 1 has been revised by substituting the following sentence:

> In 1902, human remains representing, at minimum, 16 individuals, including 1 adult female, 2 adults of unknown sex, and 13 subadults of unknown sex, were removed from the Sebonac site, Shinnecock Hills, Suffolk County, NY, during Raymond M. Harrington's excavations, sponsored by Frederick Ward Putnam and the American Museum of Natural History.

In the **Federal Register** (79 FR 2877, January 16, 2014), column 2, paragraph 2, sentence 1 has been revised by substituting the following sentence:

> Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 16 individuals of Native American ancestry.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, NY, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org*, by June 10, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Tribes may proceed.

The American Museum of Natural History is responsible for notifying The Tribes listed in the January 16, 2014 notice, that this correction notice has been published.

Dated: April 21, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–11088 Filed 5–10–16; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Mobile and Portable Electronic Devices Incorporating Haptics (Including Smartphones and Laptops) and Components Thereof, DN 3146;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Immersion Corporation. on May 5, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile and portable electronic devices incorporating haptics (including smartphones and laptops) and components thereof. The complaint names as respondents Apple Inc. of Cupertino, CA; AT&T Inc. of Dallas, TX; and AT&T Mobility LLC of Atlanta, GA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

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[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3146") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Dated: May 6, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–11063 Filed 5–10–16; 8:45 am]

BILLING CODE 7020–02–P

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov*

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Composite Aerogel Insulation Materials and Methods for Manufacturing the Same, DN 3145;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Aspen Aerogels, Inc. on May 5, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain composite aerogel insulation materials and methods for manufacturing the same. The complaint names as respondents Nano Tech Co., Ltd. of China; and Guangdong Alison Hi-Tech Co., Ltd. of China. The complainant requests that the Commission issue a general exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the

[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3145") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[4]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: May 5, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–11006 Filed 5–10–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–994]

Certain Portable Electronic Devices and Components Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 24, 2016, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Creative Technology Ltd. of Singapore and Creative Labs, Inc. of Milpitas, California. A supplement was filed on April 13, 2016. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable electronic devices and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,928,433 ("the '433 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, as supplemented, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2015).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 5, 2016, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain portable electronic devices and components thereof by reason of infringement of one or more of claims 2, 3, 5, 7, and 17–28 of the '433 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding Administrative Law Judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) Notwithstanding any Commission Rules that would otherwise apply, the presiding Administrative Law Judge shall hold an early evidentiary hearing, find facts, and issue an early decision, as to whether the asserted claims of the '433 patent recite patent-eligible subject matter under 35 U.S.C. 101. Any such decision shall be in the form of an initial determination (ID). Petitions for review of such an ID shall be due five calendar days after service of the ID; any replies shall be due three business days after service of a petition. The ID will become the Commission's final determination 30 days after the date of service of the ID unless the Commission determines to review the ID. Any such review will be conducted in accordance with Commission Rules 210.43, 210.44, and 210.45, 19 CFR 210.43, 210.44, and 210.45. The Commission expects the issuance of an early ID relating to Section 101 within 100 days of institution, except that the presiding ALJ may grant a limited extension of the ID for good cause shown. The issuance of an early ID finding that the asserted claims of the '433 patent do not recite patent-eligible subject matter under 35 U.S.C. 101 shall stay the investigation unless the Commission orders otherwise; any other decision shall not stay the investigation or delay the issuance of a final ID covering the other issues of the investigation.

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Creative Technology Ltd.

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[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

31 International Business Park
#03–01 Creative Resource
Singapore 609921
Creative Labs, Inc.
1901 McCarthy Boulevard
Milpitas, CA 95035

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ZTE Corporation
ZTE Plaza
No. 55 Hi-Tech Road South Hi-Tech Industrial Park
Shenzen 518057
Guangdong, China

ZTE (USA) Inc.
2425 N. Central Expressway #323
Richardson, TX 75080

Sony Corporation
1–7–1 Konan, Minato-ku,
Tokyo 108–0075, Japan

Sony Mobile Communications, Inc.
W-building 1–8–15 Konan 1-chome
Minato-ku
Tokyo 108–0075, Japan

Sony Mobile Communications AB
(Mailing Address)
Sölvegatan 51,
223 62 Lund, Sweden

Sony Mobile Communications (USA), Inc.
3333 Piedmont Road NE #600
Atlanta, GA 30305

Samsung Electonics Co., Ltd.
1320–10, Seocho 2-dong Seocho-gu
Seoul, Republic of Korea

Samsung Electronics America, Inc.
85 Challenger Road
Ridgefield Park, NJ 07660

LG Electronics, Inc.
LG Twin Towers, 20 Yeouido-dong, Yeongdeungpo-gu
Seoul 150–721, Republic of Korea

LG Electronics U.S.A., Inc.
1000 Sylvan Avenue
Englewood Cliffs, NJ 07632

LG Electronics Mobilecomm U.S.A., Inc.
10101 Old Grove Road
San Diego, CA 92131

Lenovo Group Ltd.
Shangdi Information Industry Base
No. 6 Chuang Ye Road, Haidan District
100085, Beijing, China

Lenovo (United States) Inc.
1009 Think Place
Morrisville, NC 27650

Motorola Mobility LLC
222 W. Merchandise Mart Plaza, Suite 1800
Chicago, IL 60654

HTC Corporation
23 Xinghua Road
Taoyuan 330, Taiwan

HTC America, Inc.
13920 SE Eastgate Way, Suite #200
Bellevue, WA 98005

Blackberry Ltd.
2200 University Avenue E
Waterloo, Ontario
Canada N2K 0A7

Blackberry Corporation
5000 Riverside Drive, Suite 100E
Irving, TX 75039

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: May 5, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–11018 Filed 5–10–16; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of meeting.

SUMMARY: The National Museum and Library Services Board, which advises the Director of the Institute of Museum and Library Services on general policies with respect to the duties, powers, and authority of the Institute relating to museum, library and information services, will meet on June 2, 2016.

DATES: Thursday, June 2, 2016, from 9:00 a.m. to 11:30 a.m. EDT.

ADDRESSES: *Place:* The meeting will be held at the IMLS Offices, Panel Room, Suite 4000, 955 L'Enfant Plaza North, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Katherine Maas, Program Specialist, Institute of Museum and Library Services, Suite 4000, 955 L'Enfant Plaza North, SW., Washington, DC 20024. Telephone: (202) 653–4676. Please provide advance notice of any special needs or accommodations.

SUPPLEMENTARY INFORMATION:

Status: The meeting will be open to the public.

Agenda: Thirty-third Meeting of the National Museum and Library Services Board Meeting:

I. Welcome and Director's Report
II. Approval of the Minutes
III. Financial and Operations Update
IV. Office of Communications and Government Affairs Update
V. Digital and Information Strategy Update Break.
VI. Office of Museum Services Update
VII. Office of Library Services Update
VIII. Question and Answer Session

Dated: May 5, 2015.

Andrew Christopher,

Associate General Counsel.

[FR Doc. 2016–11234 Filed 5–9–16; 4:15 pm]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–017; NRC–2008–0066]

Dominion Virginia Power; North Anna, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license application; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice once each week for four consecutive weeks of the North Anna Unit 3 combined license (COL) application from Dominion Virginia Power (Dominion).

DATES: May 11, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0066 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0066. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: James Shea, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1388, email: *James.Shea@nrc.gov.*

SUPPLEMENTARY INFORMATION: The Virginia Electric and Power Company, doing business as Dominion Virginia Power (Applicant) has filed an application for a COL with the NRC under Section 103 of the Atomic Energy Act of 1954, as amended, and part 52 of title 10 of the *Code of Federal Regulations* (10 CFR), "Licenses, Certifications, and Approvals for Nuclear Power Plants." Through the Application, which is currently under review by the NRC staff, the Applicant seeks to construct and operate an Economic Simplified Boiling-Water Reactor at the North Anna Power Station, which is located in Louisa County, Virginia. An applicant may seek a COL in accordance with subpart C of 10 CFR part 52. The information submitted by the applicant includes certain administrative information, such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. These notices are being provided in accordance with the requirements in 10 CFR 50.43(a)(3).

Dated at Rockville, Maryland, this 4th day of May, 2016.

For the Nuclear Regulatory Commission.

Ronaldo Jenkins,

Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–11076 Filed 5–10–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

In the Matter of Midwest Oil and Gas, Inc., File No. 500–1; Order of Suspension of Trading

May 9, 2016.

It appears to the Securities and Exchange Commission that the public interest and the protection of investors require a suspension of trading in the securities of Midwest Oil and Gas, Inc. (CIK No. 1486315) because of recent, unusual and unexplained market activity in the company's stock taking place during a suspicious promotional campaign. Midwest Oil and Gas, Inc. is a Nevada corporation with its principal executive offices in Payson, Arizona, with stock quoted on OTC Link (previously "Pinks Sheets") operated by OTC Markets Group, Inc. under the ticker symbol MWOG.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on May 9, 2016, through 11:59 p.m. EDT on May 20, 2016.

By the Commission.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2016–11183 Filed 5–9–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77771; File No. SR–ICC–2016–007]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Revise the ICC End-of-Day Price Discovery Policies and Procedures

May 5, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on April 22, 2016, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC End-of-Day Price Discovery Policies and Procedures to change the calculation of single name Firm Trade notional limits to be at a Clearing Participant ("CP") affiliate group level. These revisions do not require any changes to the ICC Clearing Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC proposes revising its End-of-Day Price Discovery Policies and Procedures to change the calculation of single name Firm Trade notional limits to be at a CP affiliate group level. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions cleared by ICC. The proposed revisions are described in detail as follows.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

As part of ICC's end-of-day price discovery process, ICC CPs are required to submit end-of-day prices for specific instruments related to their open interest at ICC, in accordance with ICC Clearing Rule 404(b) and ICC procedures. ICC determines end-of-day levels directly from these CP price submissions using a proprietary algorithm. To encourage CPs to provide high quality end-of-day submissions, on random days, ICC selects a subset of instruments which are eligible for Firm Trades. In order to determine Firm Trade requirements, the algorithm sorts and ranks all CP submissions and identifies "crossed and/or locked markets." Crossed markets are pairs of CP submitted prices generated by the sorting and ranking process for which the bid price of one CP is above the offer price of the matched CP. The algorithm identifies locked markets, where the bid and the offer are equal, in a similar fashion.

Certain crossed and/or locked markets are designated as Firm Trades and CPs are entered into cleared transactions. ICC establishes pre-defined notional amounts for Firm Trades. No single Firm Trade can have a larger notional amount than specified by the pre-defined notional amount for the relevant instrument. On a given Firm Trade day, all potential-trades resulting from the cross-and-lock algorithm in any Firm Trade eligible instrument are designated Firm Trades, unless they breach a CP's notional limits.

Currently single name Firm Trade notional limits are set at the CP level. ICC designed the Firm Trade system to incentivize trading desks to provide quality end-of-day price submissions for use in its end-of-day price discovery process, while limiting the total overnight risk that a given institution may be required to manage in case of submission errors or outlying pricing submissions which may lead to Firm Trades. One mechanism introduced to provide these protections is single name Firm Trade notional limits per CP. At the time of its introduction, this mechanism achieved its goal of limiting overnight risk limits per institution. However, with the increase in client clearing and in multiple CP memberships per holding company, the limit provided to a given institution is multiples of that originally contemplated.

In addition, because of recent changes to ICC's End-of-Day Price Discovery Policies and Procedures to extend the process for determining Firm Trades to include all submissions, including those classified as outlying pricing submissions (or "obvious errors"),[3] CPs are eligible to receive Firm Trades on a wider range of price submissions. Due to the broadened scope of the Firm Trade process, there is heightened interest in adjusting the allocation process so that CPs are not over-penalized for Firm Trades in terms of overnight risk exposure.

In order to maintain the original intent of the end-of-day price discovery process, ICC proposes changes to its End-of-Day Price Discovery Policies and Procedures to implement single name Firm Trade notional limits at the CP affiliate group level, as opposed to the CP level. The proposed changes will return the process to its original design and limit the total overnight risk that a given institution may be required to manage in the case of submission errors or outlying pricing submissions which may lead to Firm Trades.

A "CP affiliate group" is defined as the set of all affiliated CPs (*i.e.* any CPs that own, are owned by, or are under common ownership with another CP). As the sequence of crosses is considered, the executed single name Firm Trade notional value will be tracked for all CPs in a CP affiliate group. No additional single name Firm Trades will be executed against any CP in a CP affiliate group once the CP affiliate group notional limit for single name Firm Trades is reached. There are no changes to the Firm Trade algorithm as a result of these changes. Setting single name Firm Trade notional limits on an affiliate group basis is consistent with price submission practices where end-of-day submissions from multiple affiliated entities often reflect the institution's overall view on the market.

The proposal returns single name Firm Trade notional limits to the original design while maintaining the system's price submission incentives. All CPs within an affiliate group are still subject to potential Firm Trades for any given submission, on a randomized basis. Though Firm Trade notional limits will be implemented at the CP affiliate group level, the potential implication for a given trading desk of providing an off-market submission for a given instrument remains the same.

ICC is confident that the changes will have no effect to the integrity and effectiveness of the Firm Trade process. As noted above, under the proposed approach, CPs will still be subject to potential Firm Trades for any given price submission on a randomized basis. As such, ICC believes there will be no change in price submission behavior as a result of the changes, and the Firm Trade process will remain an effective tool for ensuring quality price submissions.

Section 17A(b)(3)(F)[4] of the Act requires, among other things, that the rules of a clearing agency be designed to protect investors and the public interest and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[5] because ICC believes that the proposed rule changes will assure the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, as the proposed revisions limit the total overnight risk that a given institution may be required to manage as a result of the Firm Trade process. As such, the proposed changes are designed to promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions within the meaning of Section 17A(b)(3)(F)[6] of the Act.

Section 17A(b)(3)(F)[7] of the Act also requires that the rules of a clearing agency are not designed to permit unfair discrimination among participants in the use of the clearing agency. ICC believes that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[8] because the proposed changes correct unintended consequences of the Firm Trade system as related to CP affiliate groups by eliminating the potential for a CP affiliate group to be overly penalized or disadvantaged in the Firm Trade process. Such changes ensure that no CP affiliate group is overly penalized or disadvantaged in the Firm Trade process for maintaining multiple CP memberships at the clearing house. As such, the proposed changes are designed to avoid unfair discrimination among participants in the use of the clearing agency within the meaning of Section 17A(b)(3)(F)[9] of the Act.

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[3] See Securities Exchange Act Release No. 34–74053 (January 14, 2015), 80 FR 2985 (January 21, 2015) (SR–ICC–2015–001).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

Finally, Section 17A(b)(3)(D)[10] of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. ICC believes that the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(D),[11] because under the proposed changes all CPs, including those within an affiliate group, remain subject to potential Firm Trades for any given submission, on a randomized basis. For example, in the instance where only one CP within an affiliate group provides an off market submission resulting in a Firm Trade, the notional limit will be the full notional limit amount. The proposed changes provide risk mitigation by limiting the cumulative risk exposure that one institution may be required to hold overnight as a result of a trading desk providing an off-market submission multiple times, for affiliated entities in a CP affiliate group. As such, the proposed changes provide for the equitable allocation of reasonable dues, fees, and other charges among ICC's participants within the meaning of Section 17A(b)(3)(D)[12] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition. The proposed changes to the calculation of single name Firm Trade notional limits apply uniformly across all CPs. ICC has identified an increase in multiple CP memberships per holding company, as holding companies maintain membership as a self-clearing member ("SCM") and as a futures commission merchant ("FCM")/broker-dealer ("BD"). Under the current system, those CPs who maintain multiple memberships may be unduly burdened under ICC's end-of-day process, which was established prior to this membership construct. Such changes will correct this discrepancy. Further, such changes do not improperly overly burden single CPs in furtherance of the purposes of the Act. The notional limits are designed to balance the need to incentivize CPs to provide quality end-of-day submissions with the maintenance of a safe and secure clearing system. Therefore, ICC does not believe the changes impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2016–007 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2016–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2016–007 and should be submitted on or before June 1, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11012 Filed 5–10–16; 8:45 am]

BILLING CODE 8011–01–P

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[9] *Id.*

[10] 15 U.S.C. 78q–1(b)(3)(D).

[11] *Id.*

[12] *Id.*

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77770; File No. SR–BATS–2016–16]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Shares of the Pointbreak Diversified Commodity Strategy Fund of the Pointbreak ETF Trust Under BATS Rule 14.11(i), Managed Fund Shares

May 5, 2016.

On March 7, 2016, BATS Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Pointbreak Diversified Commodity Strategy Fund of the Pointbreak ETF Trust under BATS Rule 14.11(i). The proposed rule change was published for comment in the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Federal Register on March 22, 2016.[3] On April 8, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change, and on April 14, 2016, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The Commission received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[6] designates June 20, 2016, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–BATS–2016–16), as modified by Amendment Nos. 1 and 2.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11011 Filed 5–10–16; 8:45 am]

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[3] *See* Securities Exchange Act Release No. 77379 (March 16, 2016), 81 FR 15387.

[4] Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 is available at *http://www.sec.gov/comments/sr-bats-2016-16/bats201616-1.pdf.* Amendment No. 2 amended the filing. Amendment No. 2 is available at *http://www.sec.gov/comments/sr-bats-2016-16/bats201616-2.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77769; File No. SR–ICC–2016–003]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change To Revise the ICC Operational Risk Management Framework

May 5, 2016.

I. Introduction

On March 10, 2016, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)[1] and Rule 19b–4 thereunder,[2] a proposed rule change (SR–ICC–2016–003) to update ICC's Operational Risk Management Framework. The proposed rule change was published for comment in the **Federal Register** on March 21, 2016.[3] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The ICC Operational Risk Management Framework details ICC's program of risk assessment and oversight, managed by the Operational Risk Manager (“ORM”), which, according to ICC, aims to reduce operational incidents, encourage process and control improvement, bring transparency to operational performance standard monitoring, and fulfill regulatory obligations. ICC proposes organizational changes to its Operational Risk Management Framework related to its operational risk management processes.

ICC will revise the Operational Risk Management Framework to frame its existing operational risk program and processes around an operational risk lifecycle, which according to ICC, is designed to highlight certain aspects of the processes and present the processes in a more efficient manner. The operational risk lifecycle utilized by ICC will have five components: Identify, assess, monitor, mitigate and report. Each of these lifecycle components will be first defined generally in the document then applied to each of ICC's two operational risk processes: Risk assessment; and performance objectives setting and monitoring. Specifically, the content for each risk process will be reorganized to fall into each of the operational risk lifecycle components (*i.e.*, identify, assess, monitor, mitigate, and report).

In addition, ICC will add information regarding the ‘assess’ and ‘report’ component of the risk assessment process. Specifically, ICC represents that it will assess each of its risk scenarios to determine the inherent risk rating associated with the occurrence of an event or incident, as well as the effectiveness of any relevant risk controls. Further, in the ‘report’ component, ICC will clarify that the ORM presents operational risk reporting to an internal committee which includes members of senior management. The responsibilities of the ORM, which is currently listed out in the document, will be incorporated into the risk lifecycles. ICC respresents that the ORM will continue to provide management and staff with advice and guidance related to the development of controls designed to increase performance and reduce processing risk, as part of the ‘mitigate’ risk lifecycle component. Similarly, the responsibilities of senior management, which is currently listed out in the document, will be incorporated into the risk lifecycles.

ICC will categorize those aspects of the operational risk management program which do not fall within this lifecycle as “Operational Risk Focus Areas.” These risk focus areas include: Business continuity planning and disaster recovery; vendor assessment; new products and initiatives; information security; and technology control functions. ICC will reorganize the order of these risk focus areas to better distinguish which functions may, with oversight by the ORM, be outsourced to Intercontinental Exchange, Inc. (“ICE, Inc.”) or performed by departments dedicated to that particular risk area.

ICC will make several clarifying and organizational enhancements to the various risk focus area descriptions. Further, specific details contained within other ICC policies and procedures will be removed and described more generally within the Operational Risk Management Framework, in an effort to reduce redundancy amongst ICC policies and procedures. ICC will continue to maintain business continuity planning and disaster recovery as two separate programs with separate and distinct components; however, ICC will group the description of these programs together for purposes of the Operational

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–77413 (March 21, 2016), 81 FR 16245 (March 25, 2016) (SR–ICC–2016–003).

Risk Management Framework. ICC will amend the "Vendor Assessment" risk focus area description to note that the ORM is responsible for conducting a service provider risk assessment for critical vendors, and to list the specific steps taken as part of such risk assessment. ICC also will amend the "Information Security" risk focus area description to note that the ICE, Inc. Information Security Department conducts its own risk assessments related to information security and physical security/environmental controls, pursuant to internal policies which are maintained by an ICE, Inc. internal committee. Information regarding the Firm Wide Incident Management Program will be included in the new 'Technology Controls Section.' ICC will amend the 'Technology Control Functions' risk focus area description to note that the ICC Systems Operations team is responsible for executing daily clearing functions within established service expectations and performing incident management. ICC will describe this incident management process generally within the framework, and will remove more detailed aspects of the program which are contained in specific program documentation.

General information regarding the development and enforcement of a firm-wide operational risk framework will be removed, as the revised framework will more clearly lay out in each particular section who is responsible for the development and enforcement of that component of the operational risk management framework. Information regarding the human resource reporting line of the ORM and specific references to titles of documents utilized as part of the risk assessment process will be removed. As the Vendor Risk Management policy will be retired and encompassed within the Operational Risk Management Framework, reference to the policy will be removed from the document. ICC will also remove internal audit responsibilities from the Operational Risk Management Framework as such responsibilities are contained within internal audit documentation.

ICC represents that the overall governance of the Operational Risk Framework will also be updated to reflect current practices. Specifically, material amendments are reviewed by the Risk Committee, and approved by the Board. The Board reviews the Operational Risk Management Framework at least annually.

Other non-material changes will be made to the framework to improve readability. Previously, ICC included regulatory requirements and industry guidance information within the framework; this information will be moved to a separate appendix to the framework. Further, information regarding Regulation Systems, Compliance, and Integrity will be added for completeness. Certain information regarding governance and governing committees will be resituated to the reporting section of the relevant operational risk lifecycle. Similarly, information regarding the roles and responsibilities of the ORM and senior management will be resituated to the appropriate section the operational risk lifecycle.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[4] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest. Rule 17Ad–22(d)(4),[6] in part, requires clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures.

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder applicable to ICC. The proposed rule change updates the Operational Risk Management Framework to frame its existing operational risk program and processes around an operational risk lifestyle. In addition, the proposed rule change categorizes the operational risk management programs that do not fall within this lifecycle as Operational Risk Focus Areas. The Commission finds that the reorganization of ICC's existing operational risk processes around the operational risk lifecycle is designed to promote readability and efficiency, and should alleviate potential confusion in the implementation of the Operational Risk Management Framework. In that the Operational Risk Management Framework is intended, among other things, to reduce or mitigate operational incidents that would impair ICC's ability to provide clearance and settlement services, the Commission finds that the proposed rule change is designed to facilitate the prompt and accurate clearance and settlement of securities transaction and, to the extent applicable, derivative agreements, contracts, and transactions in accordance with Section 17A(b)(3)(F) of the Act.[8] In addition, the Commission finds that the proposed rule change is consistent with the relevant requirements of Rule 17Ad–22(d)(4)[9] because the change to the ICC Operational Risk Management Framework is intended to further ensure that ICC, through its operational risk program, is able to identify sources of operational risk and minimize them through the development of appropriate systems, control, and procedures.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[10] and the rules and regulations thereunder.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–ICC–2016–003) be, and hereby is, approved.[12]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–11010 Filed 5–10–16; 8:45 am]

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[4] 15 U.S.C. 78s(b)(2)(C).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 240.17Ad–22(d)(4).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(d)(4).

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78s(b)(2).

[12] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Friday, May 13, 2016 at 10:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Resolution of litigation claims; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: May 6, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–11157 Filed 5–9–16; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 14712]

Washington Disaster #WA–00066 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Washington, dated 05/03/2016.

Incident: Greenwood Neighborhood Natural Gas Explosion.

Incident Period: 03/09/2016.

Effective Date: 05/03/2016.

EIDL Loan Application Deadline Date: 02/03/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: King.
Contiguous Counties:
Washington: Chelan, Kitsap, Kittitas, Pierce, Snohomish, Yakima.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for economic injury is 147120.

The State which received an EIDL Declaration # is Washington.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: May 3, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–11040 Filed 5–10–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14710 and #14711]

Texas Disaster #TX–00469

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–4266–DR), dated 04/28/2016.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/07/2016 through 03/29/2016.

Effective Date: 04/28/2016.

Physical Loan Application Deadline Date: 06/27/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 01/30/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/28/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Angelina, Cass, Erath, Gregg, Harrison, Henderson, Jasper, Lamar, Madison, Marion, Newton, Orange, Parker, Red River, Sabine, San Augustine, Shelby, Tyler, Walker.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14710B and for economic injury is 14711B.

(Catalog of Federal Domestic Assistance Number 59008)

Lisa Lopez Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–11042 Filed 5–10–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14708 and #14709]

Texas Disaster Number TX–00468

AGENCY: U.S. Small Business Administration

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4269–DR), dated 04/25/2016.

Incident: Severe Storms and Flooding.

Incident Period: 04/17/2016 through 04/24/2016.

Effective Date: 05/02/2016.

Physical Loan Application Deadline Date: 06/24/2016.

EIDL Loan Application Deadline Date: 01/25/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 04/25/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Austin, Colorado, Waller, Wharton.
Contiguous Counties: (Economic Injury Loans Only):
Texas: Jackson, Matagorda.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Lisa Lopez-Suarez,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2016–11041 Filed 5–10–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9554]

Culturally Significant Objects Imported for Exhibition Determinations: "Hubert Robert: 1733–1808" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "Hubert Robert: 1733–1808," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, District of Columbia, from on or about June 26, 2016, until on or about October 2, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: May 3, 2016.

Mark Taplin,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–11097 Filed 5–10–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9553]

Notice of Availability of the Final Supplemental Environmental Assessment and Finding of No Significant Impact for the NuStar Dos Laredos Pipeline Presidential Permit Application Review, Webb County, Texas

AGENCY: Department of State.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of State (Department) is issuing this notice to advise the public that on May 05, 2016 the Department approved a Finding of No Significant Impact (FONSI) based on the Final Supplemental Environmental Assessment (SEA) for the NuStar Dos Laredos Pipeline Presidential Permit Application. The Department prepared the Final SEA consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Sec. 4321, *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508), and the Department's implementing regulations (22 CFR part 161). The Department has determined the proposed action would not have a significant effect on the environment and therefore, the preparation of an Environmental Impact Statement is not required. The Finding of No Significant Impact is not a decision on the Presidential Permit application. In accordance with E.O. 13337, the Department will now proceed to make a determination as to whether issuance of a Presidential Permit for NuStar Logistics, L.P.'s proposed cross-border pipeline facilities project would serve the national interest. That determination process involves consideration of many factors, including foreign policy; energy security; environmental, cultural, and economic impacts; compliance with applicable law and regulations; and other issues.

DATES: The FONSI and Final SEA are available as of the publication date of this notice.

ADDRESSES: Copies of the FONSI and Final SEA are available at the following:

- Laredo Public Library, 1120 E Calton Rd, Laredo, Texas 78041
- *http://www.state.gov/e/enr/applicant/applicants/c61192.htm*

Copies of the FONSI and Final SEA may also be requested by email at *NuStarDosLaredos@state.gov* or by mail from: Dos Laredos Project Manager, Office of Environmental Quality and Transboundary Issues (OES/EQT): Suite 2726, U.S. Department of State, 2201 C Street NW., Washington, DC 20520.

SUPPLEMENTARY INFORMATION: The Department evaluates Presidential permit applications under Executive Order (E.O.) 13337 and E.O. 14432. E.O. 13337 delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels (except for natural gas), at the borders of the United States, and to issue or deny such Presidential Permits upon a national interest determination. The environmental review is used to inform the ultimate decision of whether or not to issue the Presidential Permit.

NuStar applied for a Presidential Permit on December 4, 2013 to amend the 2003 Presidential Permit previously issued to Valero Logistics Operations, L.P. to construct, connect, operate, and maintain transboundary pipeline facilities between the United States and Mexico approximately six miles northwest of downtown Laredo, Texas at a location on the Rio Grande River knows as "La Bota." NuStar requested a new Presidential Permit that: (1) Reflects NuStar's name change from Valero Logistics Operations, L.P. to NuStar Logistics, L.P., as the owner and operator of the Dos Laredos Pipeline crossing the international boundary; and (2) permits the transportation in either direction across the international border of a broader range of products. The 2003 Presidential Permit only allows shipment of liquefied petroleum gas (LPG). NuStar is seeking to transport other specifically defined petroleum products, including diesel.

As part of its consideration of Nustar's 2013 application, the Department prepared a SEA that supplements the Department's EA prepared in connection with the Valero Logistics Operations, L.P.'s 2003 Presidential Permit application to transport LPG across the United States-Mexico border at Webb County, Texas.

Deborah Klepp,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2016–11101 Filed 5–10–16; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 9555]

Culturally Significant Objects Imported for Exhibition Determinations: "Rembrandt's First Masterpiece" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "Rembrandt's First Masterpiece," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Morgan Library & Museum, New York, New York, from on or about June 3, 2016, until on or about September 18, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: May 3, 2016.

Mark Taplin,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–11100 Filed 5–10–16; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 6 (Sub-No. 492X)]

BNSF Railway Company—Abandonment Exemption—in Thurston County, Wash.

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 1.43 miles of rail line between milepost 14.57 and milepost 16.0 in Belmore, Thurston County, Wash. (the Line).[1] The Line traverses United States Postal Service Zip Code 98512.

BNSF has certified that: (1) No local traffic has moved over the Line since prior to 2005; (2) no overhead traffic has moved over the Line since prior to 2005; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 10, 2016, unless stayed pending reconsideration.[2] Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 20, 2016. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 31, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, Karl Morell & Associates, 655 Fifteenth St. NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void ab initio.

BNSF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by May 16, 2016. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

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[1] The Line is a portion of a 10.2-mile line of railroad currently being leased to the City of Tacoma, Department of Public Utilities, Beltline Division, d/b/a Tacoma Rail or Tacoma Municipal Beltline or TMBL (TMBL). *See City of Tacoma, Dep't of Pub. Utils., Beltline Div. d/b/a Tacoma Rail or Tacoma Mun. Beltline or TMBL—Acquisition & Operation Exemption—Lakeview Subdivision, Quadlok-St. Clair & Belmore—Olympia Rail Lines in Pierce & Thurston Ctys., Wash.*, FD 34555 (STB served Oct. 19, 2004). In the verified notice, BNSF states that TMBL will be filing for discontinuance of the Line.

[2] Although the exemption is scheduled to become effective on June 10, 2016, the transaction cannot be consummated by BNSF until TMBL obtains discontinuance authority.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by filing of a notice of consummation by May 11, 2017, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: May 6, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2016–11132 Filed 5–10–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. MCF 21066]

Rose Chauffeured Transportation, LTD—Acquisition of Control—My Bus Division of Cherry Consulting of the Carolinas, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: On April 11, 2016, Rose Chauffeured Transportation, Ltd. (Rose), a noncarrier, filed an application under 49 U.S.C. 14303 so that it can obtain approval for its acquisition of common control of the MY Bus division of Cherry Consulting of the Carolinas, Inc. (Cherry) pursuant to a July 21, 2015, Asset Purchase Agreement (APA) between the parties. The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8.

DATES: Comments must be filed by June 27, 2016. Rose may file a reply by July 11, 2016. If no comments are filed by June 27, 2016, this notice shall be effective on June 28, 2016.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21066 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of comments to Rose's representative: Robert Norris, Shumaker, Loop & Kendrick, LLP, 101 S. Treyon Street, Suite 2200, Charlotte, NC 28280.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet (202) 245–0368. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Rose, a North Carolina corporation, holds authority from the Federal Motor Carrier Safety Administration (FMCSA) as a motor carrier providing chauffeur and charter bus transportation services to the public in the states of North Carolina and South Carolina (MC–323248). Rose states that it is privately held and owned and managed by its president, H.A. Thompson, a resident of North Carolina. According to Rose, it created Rose Charters, LLC (RC), a non-carrier holding company, for the purpose of consummating the transaction between Rose and Cherry. Rose states that RC, which is managed by H.A. Thompson, does not have any operating assets or interstate motor carrier authority.

Rose further states that Cherry, a North Carolina corporation, provides consultation services related to interstate and intrastate transportation. According to Rose, Cherry's MY Bus division owned two buses that it used to provide passenger services to churches in and around Charlotte, N.C. Rose states that the MY Bus division also possessed a Department of Defense (DOD) identification code, which allowed it to bid on DOD contracts. Cherry also holds authority from the FMCSA as a motor carrier (MC–364041). Rose states that, since entering into the APA, Cherry has ceased its activities as a motor carrier and, thus, does not compete with Rose.

Rose seeks Board authority for its acquisition of certain of Cherry's assets pursuant to the APA, which, as noted, was dated July 21, 2015.[1] Specifically, Rose states that it acquired: (1) Two buses; (2) DOT registration number 822939; (3) FMCSA license MD–364041; (4) DOD identification code MYAJ; (5) the "MY Bus" name and all other common law intellectual property rights related to MY Bus; (6) the email address "*info@mybusinc.com*"; and (7) the Web site addresses, domains, telephone numbers, and fax numbers related to MY Bus.

Rose states that the purchase of assets only does not necessarily trigger Board jurisdiction, but it argues that the Board has jurisdiction here given that there is significant preservation of the identity of Cherry's MY Bus division. We agree. *See Cowan Transp., Inc.—Purchase Exemption—Bowman Int'l Domestic Transp., Inc.*, Docket No. MCF 20144 *et al.* (ICC served Dec. 30, 1993) (agency authority exists where there is preservation of the corporate identity of the selling carrier coupled with the agreement that the selling carrier will cease competitive operations).[2]

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) The effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Rose submitted information, as required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), and a statement that the aggregate gross operating revenues of Rose and Cherry exceeded $2 million for the preceding 12-month period. *See* 49 U.S.C. 14303(g).

Rose submits that the proposed transaction would have no significant impact on the adequacy of transportation services to the public. Rose states that it will be able to bid on and perform DOD contracts that Cherry did not have the resources to handle. In fact, Rose anticipates improved public service because Cherry had not bid on or received any DOD contracts in the years prior to the transaction, and Rose has bid on and performed several DOD contracts since the transaction "to the full satisfaction of all parties." (Appl. 7.)

Rose asserts there are no fixed charges associated with the transaction or the proposed acquisition of control. Rose also states that it does not anticipate a measurable reduction in force or changes in compensation and benefits, and states that Cherry has not terminated any employees since the transaction was agreed upon in July 2015.

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[1] Rose states that, at the time they entered into the APA, none of the parties were aware of the Board's jurisdiction over the transaction. Rose now seeks retroactive, or nunc pro tunc, approval of the transaction. The Board will tentatively approve and authorize the transaction, but only as of the date of service of this decision, and not retroactively. Absent any comments, this notice shall be effective on June 28, 2016.

[2] We also note that, according to Rose, Cherry "operated a largely intrastate point-to-point and special party passenger service to local churchgoers," but it also had interstate operations due to "its location in Charlotte, North Carolina, being a few miles away from the South Carolina border, and the fact that several churchgoers in Charlotte lived over the state border in South Carolina." (Appl. 8) *See* 49 U.S.C. 13501 (the Board has jurisdiction "over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier . . . between a place in . . . a State and a place in another State.").

The Board finds that the acquisition described in the application is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV*".

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.
3. This notice will be effective June 28, 2016, unless opposing comments are filed by June 27, 2016.
4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590.

Decided: May 6, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2016–11131 Filed 5–10–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Release Request for a Change in Designation of On-Airport Surplus Property From Aeronautical to Non-Aeronautical Use at the Harrisburg International Airport (MDT), Middletown, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice release request for a change in designation of on-airport surplus property from aeronautical to non-aeronautical use.

SUMMARY: The Federal Aviation Administration (FAA) is requesting public comment on the Susquehanna Area Regional Airport Authority's (SARAA) request to change 11.398 acres of airport property from aeronautical use to non-aeronautical use. The acreage in question is subject to the Provisions of the Federal Property and Administrative Services Act of 1949, and the Surplus Property Act of 1944 as amended. In accordance with 49 U.S.C. 47151(d), 47153(c), and 47107(h), this notice is required to be published in the **Federal Register** for 30 days before waiving the condition that such land be used for aeronautical purposes. The purpose of the release request is to enable SARAA to generate revenue from this property by taking action including, but not limited to, entering into a long-term lease with Shaner Hotel Holdings for the purpose of constructing and operating a four (4) story hotel consisting of 120 guest rooms, a meeting center and restaurant.

DATES: Comments must be received on or before June 10, 2016.

ADDRESSES: Documents are available for review at the Susquehanna Area Regional Airport Authority Office located at the Harrisburg International Airport.

Timothy Edwards, Executive Director, Harrisburg International Airport, Susquehanna Area Regional Airport Authority, One Terminal Drive, Suite 300, Middletown, PA 17057, 717–948–3900.

and at the FAA Harrisburg Airports District Office:

Oscar D. Sanchez, Program Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011, (717) 730–2834.

FOR FURTHER INFORMATION CONTACT: Oscar D. Sanchez, Program Manager, Harrisburg Airports District Office (location listed above). The documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Harrisburg International Airport, Executive Director's Office.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the request:

This action will allow the re-designation of the 11.398 acres as land available for non-aeronautical use on the Airport Layout Plan (ALP). The purpose of the release request is that SARAA has determined that it is in its best interest to encourage development under long-term leases of land not needed for airport development on the approved ALP to increase airport revenues. Consistent with this purpose, this release request will enable SARAA to enter into a long-term lease agreement with Shaner Hotel Holdings for the purpose of constructing and operating a four (4) story hotel consisting of 120 guest rooms, a meeting center and restaurant. The hotel will encompass 2.73 acres of the 11.398-acre site. The remaining acres will be available for future long-term lease agreements for commercial retail development. There is to be no sale or transfer of property rights in connection with this Airport Layout Plan change. Proceeds from the lease of this property will be utilized in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

MDT, including the 11.398 acres that are the subject of this release request, was the former Olmsted Air Force Base. On June 20, 1967, under the provisions of the Federal Property and Administrative Services Act of 1949, and the Surplus Property Act of 1944, as amended, the Air Force ceded Olmsted Air Force Base to the Commonwealth of Pennsylvania for the purpose that it be utilized as an airport. This land was conveyed to SARAA by the Commonwealth of Pennsylvania through its Department of Transportation by a deed dated 01/02/1998 and recorded in Dauphin County, Pennsylvania book 3008, page 425. On December 8, 2015, the Department of Defense concurred with the decision to release the National Emergency Use Provision on the 11.398 acres.

The 11.398 acres is located on the landside of the airport in a central area in close proximity to the parking garage, terminal building, and long-term parking within the Terminal Drive loop. To the north, the area is bordered by Airport Drive, Amtrak Railroad, and Route 230. To the south of the area lies the snow removal equipment building and a passenger cell phone lot. West of the area is a paved employee parking lot. The parcel is further identified as Dauphin County identification Parcel 36–024–001. The property is currently depicted on the approved ALP on record as airport property and consists of asphalt pavement that is currently used as a nonrevenue producing employee vehicle parking lot. MDT has sufficient parking space available to replace the employee parking lot. This parcel is not needed for future aeronautical development as shown on the airport's ALP.

Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, May 4, 2016.

Lori K. Pagnanelli,

Manager, Harrisburg Airports District Office.

[FR Doc. 2016–11117 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–64]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before May 31, 2016.

ADDRESSES: You may send comments identified by docket number FAA–2016–0328 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *mark.forseth@faa.gov,* phone (425) 227–2796; or Sandra Long, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email *sandra.long@faa.gov,* phone (202) 493–5245.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 29, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–0328.

Petitioner: L–3 Communications Integrated Systems, L.P.

Section of 14 CFR Affected: § 25.813(e).

Description of Relief Sought: Relief from the requirements and limitations specified in exemption no. 10686, which stipulates that doors installed across the main aisle must open and close in a transverse direction. The petitioner seeks to install curved partition doors in Boeing Model 747–8 airplanes designated as private use, not for hire, not for common carriage.

[FR Doc. 2016–11112 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property and Long-Term Lease Approval at Harrisburg International Airport (MDT), Middletown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice request for public comment.

SUMMARY: The Federal Aviation Administration (FAA) is requesting public comment on the Susquehanna Area Regional Airport Authority's (SARAA) request to change 7.18 acres of airport property from aeronautical use to non-aeronautical use. The acreage in question is subject to the Provisions of the Federal Property and Administrative Services Act of 1949, and the Surplus Property Act of 1944 as amended. In accordance with 49 U.S.C. 47151(d), 47153(c), and 47107(h), this notice is required to be published in the **Federal Register** 30 days before waiving the condition that such land be used for aeronautical purposes. The purpose of the release request is to enable SARAA to generate revenue from this property by taking action including, but not limited to, entering into a long-term lease agreement with UPS for the purpose of constructing and operating a mobile distribution facility.

DATES: Comments must be received on or before June 10, 2016.

ADDRESSES: Documents are available for review at the Susquehanna Area Regional Airport Authority Office located at Harrisburg International Airport:

Timothy Edwards, Executive Director,
Harrisburg International Airport,
Susquehanna Area Regional Airport Authority,
One Terminal Drive,
Suite 300,
Middletown, PA 17057,
717–948–3900.

and at the FAA Harrisburg Airports District Office:

Oscar D. Sanchez, Program Manager,
Harrisburg Airports District Office,
3905 Hartzdale Dr., Suite 508,
Camp Hill, PA 17011,
(717) 730–2834.

FOR FURTHER INFORMATION CONTACT: Oscar D. Sanchez, Program Manager, Harrisburg Airports District Office (location listed above).

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to re-designate current aeronautical property at the Harrisburg International Airport as available for non-aeronautical use under the provisions of Section 47125(a) of Title 49 U.S.C.

The following is a brief overview of the request:

This action will allow the re-designation of the 7.18 acres as non-aeronautical use on the Airport Layout Plan (ALP). The purpose of the release request is that SARAA has determined that it is in its best interest to encourage development of land not needed for airport development on the approved ALP to increase airport revenues. Consistent with this purpose, this release request will enable SARAA to enter into a lease agreement with UPS for the purpose of constructing and operating a mobile distribution facility. There is to be no sale or transfer of property rights in connection with this Airport Layout Plan change. Proceeds from the lease of this property will be utilized in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

MDT, including the 7.18 acres that are the subject of this release request, was the former Olmsted Air Force Base. On June 20, 1967, under the provisions of the Federal Property and Administrative Services Act of 1949, and the Surplus Property Act of 1944, as amended, the Air Force ceded Olmsted Air Force Base to the Commonwealth of Pennsylvania for the purpose that it be utilized as an airport. This land was conveyed to SARAA by the Commonwealth of Pennsylvania through its Department of Transportation by a deed dated 01/02/1998 and recorded in Dauphin County, Pennsylvania book 3008, page 425. On April 21, 2016, the Department of Defense concurred with the decision to release the National Emergency Use Provision on the 7.18 acres.

The 7.18 acres is located on the landside of the airport in a central area in close proximity to Airport Drive, and the long-term parking area. To the north, the area is bordered by Airport Drive, Amtrak Railroad, and Route 230. To the south of the area lies the Pennsylvania Air National Guard (PANG) 193rd Special Operations Wing Complex. The subject parcel is defined as Dauphin County tax identification Parcel 36–024–001. The property is currently depicted on the approved ALP on record as airport property and consists of asphalt pavement that is currently used as an overflow long-term vehicle parking lot. MDT has sufficient parking space available to accommodate existing and future anticipated needs. This parcel is not needed for future aeronautical development as shown on the airport's ALP.

Any person may inspect the request by appointment at the FAA office address listed above. Interested persons are invited to comment. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, May 4, 2016.

Lori K. Pagnanelli,

Manager, Harrisburg Airports District Office.

[FR Doc. 2016–11118 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–43]

Petition for Exemption; Summary of Petition Received; Drone Surveys and Reports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 31, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–1020 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, 202–267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 2, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–1020.

Petitioner: Drone Surveys and Reports.

Section(s) of 14 CFR Affected: § 61.51.

Description of Relief Sought: Petitioner is requesting to amend Exemption No. 11800 to allow operations of a small unmanned aircraft system (UAS) by a person who does not hold an FAA-issued pilot certificate under the direct supervision of a pilot holding either an airline transport or commercial pilot certificate, in accordance with the conditions and limitations. The petitioner would also like to add the following aircraft to the exemption: 3D Robotics X8, 3DR Solo, Bheema Walkera QR X350 Pro, Blade 350 QX V2, Blade Chroma, DJI Phantom 3, DJI SPREADING WINGS S1000, DJI SPREADING WINGS S900, Dreamfly Walkera Voyager 3, FLYPRO PX400 PRO 2, FREEFLY Alta Drone, HUBSAN X4 Pro High Edition, Lehmann LA100 GoPro Drone, Lumenier QAV250, Parrot AR.Drone 2.0, Parrot BeBop, Q500 4K Typhoon, QAV400, Robotics Iris+, Steadidrone Flare, The Live Video Camera Drone, Turbo Ace Matrix, Turbo Ace X830D Drone RTF, Walkera Scout X4, Walkera Tali, H500, xFold CINEMA X12, xFold CINEMA X8, xFold DRAGON X8 KDE, xFold DRAGON X8 U11, XProHeli ProPack XP2, XProHeli XPX, and Yuneec Typhoon Q500+.

[FR Doc. 2016–11109 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–63]

Petition for Exemption; Summary of Petition Received; Drone Consultants LLC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 31, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–5557 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, (202) 267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 2, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–5557.

Petitioner: Drone Consultants LLC.

Section(s) of 14 CFR Affected: Part 21 subpart H and §§ 45.23(b), 61.113(a) & (b), 91.7(a), 91.9(b)(2), 91.103, 91.109, 91.119(c), 91.121, 91.151(a), 91.203(a) & (b), 91.205(c), 91.209, 91.405(a), 91.407(a)(1), 91.409(a)(2), 91.417(a) & (b).

Description of Relief Sought: The petitioner is requesting relief for the following:

1. Commercially Operate the DJI F550, DJI S–800, DJIS–900 and DJI Phantom 3 for the aerial photography/videography/inspection, and conducting sUAS operator training, qualification and demonstrations.
2. Night operations of DJI Phantom 3 under VFR conditions up to 200 feet AGL without having to request permission to fly each time from the FAA FSDO closest to the proposed area of operations.

[FR Doc. 2016–11106 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–65]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 31, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–5447 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 2, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–5447.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: § 25.810(c).

Description of Relief Sought: The Boeing Company has requested an exemption from 14 CFR 25.810(c) for certain new production Model 737 series airplanes that will be delivered to completion centers for interior modification and exterior painting.

[FR Doc. 2016–11113 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–62]

Petition for Exemption; Summary of Petition Received; BNSF Railway Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 31, 2016.

ADDRESSES: Send comments identified by docket number FAA–2014–0704 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, (202) 267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 2, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0704.

Petitioner: BNSF Railway Company.

Section(s) of 14 CFR Affected: §§ 61.113(a), 91.7(a), 91.119(c), 91.121, 91.151(a)(1), 91.405(a), 91.407(a)(1), 91.409(a)(1)(2), and 91.417(a)(b).

Description of Relief Sought: The petitioner is requesting to amend Exemption No. 11206 to allow changes to Condition and Limitations #5 and #6 (to allow operations within VLOS of either the PIC or the VO), #16 (to allow the PIC to possess an airline transport, commercial, private, recreational, or pilot certificate, as well as a current FAA airmen medical certificate or a valid U.S. driver's license), #18 (to allow operations at night), #20 (to allow operations during inclement weather and operations of UAS in Class G airspace applying the VFR limits in 14CFR 91.155), #29 (to allow operations from a moving vehicle), and #31 (to allow operations within 500 feet from non-participating vehicles).

[FR Doc. 2016–11107 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2016–57]

Petition for Exemption; Summary of Petition Received; Jackie E. Watson

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 31, 2016.

ADDRESSES: Send comments identified by docket number FAA–2015–1418 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Ngo, (202) 267–4264, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 2, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2015–1418.

Petitioner: Jackie E. Watson.

Section(s) of 14 CFR Affected: §§ 61.56(a)(1), 61.56(c)(2), and 91.126 through 91.145.

Description of Relief Sought: Petitioner seeks to amend Exemption No. 12077 for relief from Condition and Limitation #13 regarding Pilot in Command requirements to operate an unmanned aircraft system (UAS) for aerial data collection.

[FR Doc. 2016–11105 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Submission Deadline for Schedule Information for Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, and San Francisco International Airport for the Winter 2016 Scheduling Season

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice, Schedule submission deadline.

SUMMARY: The FAA announces the submission deadline of May 19, 2016, for winter 2016 flight schedules at Chicago O'Hare International Airport (ORD), John F. Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Newark Liberty International Airport (EWR), and San Francisco International Airport (SFO) in accordance with the International Air Transport Association (IATA) Worldwide Slot Guidelines (WSG) and FAA airport level designations. The deadline coincides with the schedule submission deadline for the IATA Slot Conference for the winter 2016 scheduling season.

DATES: Schedules must be submitted no later than May 19, 2016.

ADDRESSES: Schedules may be submitted by mail to the Slot Administration Office, AGC–200, Office of the Chief Counsel, 800 Independence Avenue SW., Washington, DC 20591; or by email to: *7-AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone number: 202–267–6462; email: *susan.pfingstler@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has designated EWR, LAX, ORD, and SFO as IATA Level 2, schedule facilitated airports.[1] JFK is designated as an IATA Level 3, slot controlled airport.[2] At the Level 2 airports, proposed schedules are reviewed by the FAA to address significant, potential congestion before schedules are final. A runway slot is required from the FAA at JFK, a Level 3 airport, before a carrier operates during the slot controlled hours.

The FAA is primarily concerned about scheduled and other regularly conducted commercial operations during peak hours, but carriers may submit schedule plans for the entire day. At ORD, the peak hours are 0700 to 2100 Central Time (1300 to 0300 UTC), at LAX and SFO from 0600 to 2300 Pacific Time (1400 to 0700 UTC), and at EWR and JFK from 0600 to 2300 Eastern Time (1100 to 0400 UTC). The FAA prefers schedule messages with the format and data elements in IATA Standard Schedules Information Manual (SSIM), Chapter 6, as recommended in the WSG. The FAA will also accept other mutually agreed schedule information formats; however, carriers should submit schedule information in sufficient detail including, at minimum, the operating carrier, flight number, scheduled time of operation, frequency, and effective dates.

The winter scheduling season is from October 30, 2016, through March 25, 2017, consistent with the IATA northern winter season. The FAA understands there may be differences in schedule times due to U.S. daylight saving time dates and will accommodate these differences to the extent possible.

Carriers operating at JFK or LAX should consider the potential impacts of runway construction projects as they develop schedules, block times and other factors. The FAA has been working with the airport operators, airlines, and other stakeholders to develop plans to utilize available capacity and mitigate delays during construction.

JFK will have construction in 2017 on Runway 4R/22L. The Port Authority of New York and New Jersey (PANYNJ), the airport operator, is currently considering the scope and staging plans for rehabilitation of the runway and expects to soon finalize plans. Depending on the final construction schedule, the runway may be closed beginning approximately February 27. The closure and other construction impacts could affect operations during the last few weeks of the winter 2016 scheduling season and into the summer 2017 and winter 2017 scheduling seasons.

LAX will undergo construction on Runway 7L/25R for runway safety areas and rehabilitation beginning in October 2016. Los Angeles World Airports (LAWA), the airport operator, expects to shorten the runway in October for approximately 3.5 months followed by a four month closure from January to May 2017.

On April 6, the FAA announced in the **Federal Register** (81 FR 19861) that the EWR airport level designation will change from Level 3 to Level 2 effective with the winter 2016 scheduling season. Although there is available runway capacity throughout the day, the FAA strongly encourages carriers to propose reasonable schedules, recognizing there is limited runway and airport capacity available for new flights or existing flights retimed to certain hours. Carriers will be asked to consider alternative schedule times if proposed demand exceeds capacity, which is likely to occur during the busiest early morning, late afternoon, and evening hours.

The PANYNJ is considering the process for reviewing EWR gate and terminal availability. This is in addition to its previously established review under the IATA WSG process for Terminal B international passenger flights. The FAA expects to work with the PANYNJ as it considers gate and terminal availability and how that might impact the FAA's review of schedules for runway availability. Carriers should submit information directly to the PANYNJ for airport terminal or gate issues.

The FAA reviewed the historical airport runway capacity levels over several years of operations including hourly data for each weekday. This analysis considered the actual air traffic control (ATC) established arrival and departure rates, the number of actual operations in an hour if it exceeded the projected ATC rate for that particular hour, runway configurations, weather, aircraft fleet mix, and other operating conditions. For the winter months, the data show the average hourly runway adjusted capacity for the previous similar winter seasons is approximately 79 total operations. The limit FAA established in the EWR Order in 2007, which was derived using peak summer data, was intended to prevent delays from getting worse than 2007 levels. Although the adjusted capacity for winter 2016 is below the previously established limit it is reflective of recent operational data in the similar previous season and would allow the FAA to approve additional operations over the number operated in winter 2015.

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[1] The FAA's designation of EWR as Level 2 takes effect on October 30, 2016. 81 FR 19861 (Apr. 6, 2016). Through the Summer 2016 scheduling season, the FAA has designated EWR as Level 3 by Order, Operating Limitations at Newark Liberty International Airport, 73 FR 29550 (May 21, 2008) as amended 79 FR 16857 (March 26, 2014).

[2] The FAA limits flights at JFK during peak hours by Order, Operating Limitations at John F. Kennedy International Airport, 73 FR 3510 (Jan. 18, 2008) as amended. The FAA intends to extend the effective date of the Order to October 27, 2018. The extension will be published in a separate notice in the **Federal Register**.

The FAA will use the following EWR capacities for scheduled flights during the winter 2016 season, reflecting average airport runway statistics during the recent winter scheduling seasons.[3] The limits for purposes of Level 2 review are 79 scheduled operations per hour, 43 in a half-hour, 79 in consecutive half-hours, and 231 in rolling three-hour periods. The FAA believes that a transition from Level 3 to Level 2 should consider the need for air traffic control facilities and the airport terminal and gate infrastructure to adapt to the expected increase in operations. The three hour limitation will allow a higher number of flights in some hours while also allowing for system recovery. In reviewing proposed schedules, the FAA will also consider the distribution of scheduled arrivals and departures within a half-hour or hour and whether there is significant peaking due to the distribution of flights within the period. The FAA may seek adjustments to proposed schedules to address congestion issues.

As it has in prior scheduling seasons, the FAA will use the average hourly runway capacities at LAX, ORD, and SFO. The FAA may include particular emphasis or review for time periods with current or projected operational impacts and discuss the reasons for any proposed schedule adjustments directly with affected carriers. LAX capacity estimates for the runway construction phases in later 2016 and 2017 have been presented to carriers during LAX construction meetings. These rates have not been finalized and will be reviewed with carriers on a local level during upcoming meetings.

The FAA intends to deny approval for carrier schedules that exceed capacity with limited exceptions. These exceptions may include flights operated only a relatively short time period in the prior season, ad hoc or limited term cargo flights such as those operated in past years prior to the Christmas holidays, and flights to meet high demand such as Thanksgiving, Christmas, or similar periods. The FAA will primarily review schedules for runway capacity on a half-hourly basis, allowing flexibility for carrier schedules within those windows without the need for additional FAA schedule review.

Issued in Washington, DC, on May 6, 2016.

Daniel E. Smiley,

Vice President, System Operations Services.

[FR Doc. 2016–11116 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2007–28532]

Surrender and Termination of the Port Dolphin Energy LLC License To Own, Construct and Operate the Port Dolphin Deepwater Port

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of license surrender and termination.

SUMMARY: The Maritime Administration (MARAD) announces the surrender and termination of the Port Dolphin Energy LLC (Port Dolphin Energy) Deepwater Port License ("License"). All actions and obligations required by the License to own, construct and operate a deepwater port issued to Port Dolphin Energy on May 7, 2010, are terminated. Pursuant to Section 1503(h) of the Deepwater Port Act of 1974, as amended, a deepwater port license may remain in effect until such time it is either suspended or revoked by the Secretary of Transportation (Secretary) or surrendered by the licensee. MARAD has approved this action in response to Port Dolphin's notification of its decision to abandon its plans to construct and operate the proposed Port Dolphin Energy deepwater port, and surrender its License for the proposed facility.

DATES: The date of surrender and termination of all actions and obligations required under the license was effective on April 25, 2016.

ADDRESSES: The public docket for the Port Dolphin Energy deepwater port is identified by Docket No. USCG–2007–28532 and is maintained by the U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

The Federal Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management Facility's telephone number is 202–366–9826 or 202–366–9317, the fax number is 202–493–2251 and the Web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov.* Keyword search "USCG–2007–28532."

FOR FURTHER INFORMATION CONTACT: If you have questions about the Port Dolphin Energy deepwater port project, please contact Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities at (202) 366–0926 or *Yvette.Fields@dot.gov.*

SUPPLEMENTARY INFORMATION: On August 28, 2015, MARAD received notification from the licensee, Port Dolphin Energy, of its intention to surrender its License to own, construct and operate a liquefied natural gas (LNG) deepwater port proposed for location approximately 28 miles off the western coast of Florida, and approximately 42 miles from Port Manatee, Manatee County, Florida. After careful review of the License surrender request, MARAD determined that all outstanding obligations required of Port Dolphin Energy for the surrender and termination of its License were satisfied. Accordingly, on April 25, 2016, the Maritime Administrator approved the surrender and termination of the License including termination of the related financial guarantees and all other obligations required under the License. MARAD has issued notification letters regarding this final agency action to Port Dolphin Energy and to all relevant Federal and State agencies involved in the original approval of the Port Dolphin project. Further information pertaining to this project may be found in the public docket (*see* **ADDRESSES**).

Authority: 49 CFR 1.93(h).

Dated: May 6, 2016.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2016–11079 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–81–P

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[3] Unscheduled flights are not included in the FAA Level 2 schedule review process or hourly scheduling limits. Unscheduled flights include general aviation, business aviation, military, public aircraft, ferry and positioning flights, and ad hoc charter operations. Regularly conducted commercial services, including public charters, are considered scheduled operations for the purposes of FAA's Level 2 review.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modification of Special Permit

AGENCY: Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 10, 2016.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(6); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 21, 2016.

Donald Burger,

Chief, Office of General Approvals and Permits.

SPECIAL PERMITS DATA

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
13112–M	....	Carleton Technologies, Inc	3, 302A	To modify the special permit to authorize testing of the pressure relief function by primer auto ignition to take place at the initiator chamber assembly level instead of at the final pressure vessel assembly level.
14920–M	....	Nordco Rail Services & Inspection Technologies Inc.	173.302a(b), 172.203(a), 172.301(c), 180.205.	To modify the special permit to authorize 3A, 3AL, and DOT–SP 12440 cylinders to be retested by a 100% ultrasonic examination, marking requirements equal to or less than 5 inches, different dimensions of a flat bottom hole to be used during ultrasonic examinations, and add an acceptable level of tolerances to the maximum achieved reference amplitude.
16323–M	....	Fibre Drum Sales, Inc	178.801(f)	To modify the special permit to remove the requirement to perform a leak proofness test on remanufactured composite IBCs.

[FR Doc. 2016–10977 Filed 5–10–16; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Requests for Information: Community Development Financial Institutions Prize Competition

ACTION: Notice and request for information.

SUMMARY: The Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury, requests comments from the public regarding a proposed CDFI Prize Competition to be administered by the CDFI Fund in Fiscal Year (FY) 2016. The proposed FY 2016 CDFI Prize Competition will reward selected applicants with monetary prizes for proposing innovative ideas and approaches to increasing CDFI investment and access to capital in underserved rural areas. The CDFI Fund expects that, through the proposed competition, it will award no less than $1,000,000 of FY 2016 appropriated funds, through the prize competition authority granted by the America COMPETES Reauthorization Act of 2010 (15 U.S.C. 3719) (the Act). The CDFI Fund expects to publish detailed information regarding the FY 2016 CDFI Prize Competition, including information on how to apply to be considered for prizes to be awarded through the competition, through *www.challenge.gov,* on or about June 1, 2016. Capitalized terms found in this notice are defined in the regulations that govern the CDFI Program, at 12 CFR 1805.104.

DATES: Written comments must be received by 11:59 p.m. May 25, 2016 to be assured of consideration.

ADDRESSES: Submit your comments via email to William Girardo, Portfolio Manager, CDFI Fund, at *CDFIchallenge@cdfi.treas.gov.*

FOR FURTHER INFORMATION CONTACT: William Girardo, Portfolio Manager, CDFI Fund, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 653–0383 (not a toll-free number). Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's Web site at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION: Section 3719(d) of the Act states that Federal agencies must "consult widely both within and outside the Federal Government" when selecting topics for prize competitions. The topic of the proposed FY 2016 CDFI Prize Competition is to stimulate innovation that will build capacity to expand CDFI investments in underserved rural areas, particularly those that are characterized by persistent poverty. As required by the Act, the proposed FY 2016 CDFI Prize Competition will award innovative proposals that (i) identify and promote new ideas and practices, thereby facilitating their implementation by CDFIs that serve rural Target Markets, and/or (ii) create value during and after the competition by encouraging contestants—and CDFIs that serve rural Target Markets—to change their behavior or develop new skills that may have beneficial effects during and after the competition. Please note that the purpose of the proposed prize competition is to stimulate and reward innovative ideas: Since the proposed prize competition is not a grant or contract program, the prize funds are to reward ideas and proposals, and not for their implementation or the costs of their implementation.

In addition to seeking feedback on this proposed prize competition topic, the CDFI Fund seeks feedback from the public through this Request for Information (RFI) regarding a variety of questions on the proposed FY 2016 CDFI Prize Competition, including proposed eligibility and submission requirements, and evaluation criteria.

I. Request for Information

The CDFI Fund is seeking public comment through this RFI regarding certain aspects of the proposed FY 2016 CDFI Prize Competition, including the proposed topic. In particular, we are interested in responses to the questions listed in the Section V, Key Questions. We also seek any additional information beyond these questions that members of the public believe would assist in the implementation of the proposed FY 2016 CDFI Prize Competition.

The CDFI Fund has scheduled a conference call for May 19, 2016, at 12:00 p.m. EDT, to provide an additional opportunity for public input on the proposed FY 2016 CDFI Prize Competition. Please see the CDFI Fund's Web site for additional information on how to register to participate in the call.

Please note that the CDFI Fund is not accepting applications for the proposed FY 2016 CDFI Prize Competition at this time. This RFI only seeks public responses to the questions posed herein. The CDFI Fund will publish detailed information regarding the FY 2016 CDFI Prize Competition, including information on how to apply to be considered for prizes to be awarded through the competition, through *www.challenge.gov* on or about June 1, 2016.

II. Proposed FY 2016 Prize Competition: Overview

As stated above, the CDFI Fund proposes that the topic of the proposed FY 2016 Prize Competition is to stimulate innovation that will build capacity to expand CDFI investments in underserved rural areas, particularly those that are characterized by persistent poverty. For purposes of this RFI, an area that is characterized by "persistent poverty" is defined as any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990, 2000, and 2010 decennial censuses. Rural areas, especially those that are persistently poor, often lack access to capital and financial services that are the lifeblood of a vibrant economy. For purposes of this RFI, a "rural area" is defined as a county or counties that are considered non-Metropolitan Areas under the CDFI Program's regulations (12 CFR 1805.104(ff).

Through the proposed FY 2016 CDFI Prize Competition, the CDFI Fund expects to select approximately four winners that will each receive a total of approximately $250,000. See Section III for proposed timeline and disbursement information.

III. Proposed Eligibility, Application Requirements, and Timeline

Proposed Eligibility: An applicant for the proposed FY 2016 CDFI Prize Competition will be: (i) A certified CDFI (as defined in 12 CFR 1805.104(h) and 1805.200) that serves a Target Market that comprises a rural area; (ii) a collaboration of certified CDFIs that serve Target Markets that comprise rural areas; (iii) an institution that has partnered with a certified CDFI that serves a Target Market that comprises a rural area; or (iv) a collaboration of certified CDFIs that serve Target Market(s) that comprise rural areas. The CDFI Fund expects that preference will be given to applicants that serve Target Markets that comprise rural areas that are characterized by persistent poverty.

Proposed Application Requirements: To be considered for an award through the proposed FY 2016 CDFI Prize Competition, the CDFI Fund expects that it will require applicants to submit an application of not more than 10 pages that describes:

A. The Target Market(s) addressed through the proposal;

B. A description of the problem(s) creating barriers to accessing capital in Target Market(s) that comprise rural areas (and, if applicable, that are characterized by persistent poverty);

C. A narrative description that includes:

1. An innovative idea or strategy for solving the problem(s) described above;
2. If the idea or strategy has not yet been implemented, expected (within one year) short-term outcomes and expected long-term outcomes (within five years);
3. If the idea or strategy has been implemented, achieved outcomes, if applicable;

D. An explanation of any partnerships (and partnership documentation) that have been or will be created to increase capacity and expand investments in the Target Market(s), including the roles of each partner;

Proposed Timeline (dates are approximate and should not be relied upon): Publication of notice announcing the opening of the FY 2016 CDFI Prize Competition: June 1, 2016.

Application deadline: July 1, 2016.

Selection of prize winners: September 2016.

Award disbursement: No later than September 30, 2016.

Milestone payment (if applicable): No later than June 30, 2017.

Proposed Disbursements and Reports: As currently proposed, an award payment of at least 50 percent of the total prize will be disbursed to each winner by September 30, 2016. For ideas or strategies that have already been implemented, the award payment will be for 100 percent of the total prize. For ideas or strategies that have not yet been implemented, a first milestone payment of the remaining prize amount would be disbursed no later than June 20, 2017, upon submittal of a report evaluating the outcomes through the prize winner's efforts to implement the proposed idea or strategy.

Capacity-building Purposes: For the purposes of furthering its CDFI capacity-building initiative and disseminating best practices across the country, the CDFI Fund, in its sole discretion will release to the public applications, supporting documentation, reports, and any related information that describes the proposals and successful strategies that applicants and award winners have taken and will take to expand CDFI investments in underserved rural areas. Notwithstanding the CDFI Fund's intention to publicly disseminate the proposals and the winning applications, please note that intellectual property submitted to the proposed prize competition will remain with the applicants and the award winners.

IV. Proposed Judges; Proposed Evaluation Criteria

The CDFI Fund expects that the judges for the proposed FY 2016 CDFI Prize Competition will include staff of the CDFI Fund, the Department of the Treasury, and other Federal government agencies, as well as certain members of the public who are qualified and experienced in community and economic development in rural areas. The experience of proposed judges will be reviewed to determine whether there are any conflicts of interest with applicants.

The CDFI Fund is considering whether application evaluation criteria will include, but not be limited to, the following:

A. The depth of need for investment capital and the lack of access to such capital within the Target Market;

B. The potential to leverage private, public, and philanthropic capital, including matching funds, if any, for the prize purse;

C. Alignment of the proposed capacity building plan with the expertise of the applicant;

D. If applicable, the complementarity of the proposed partnership(s) and the potential it holds for building scale and/or deepening the capacity of CDFIs;

E. The degree of innovation applied to resolving the problem; and

F. The proposed design of the evaluation and the likelihood that it has yielded or will yield meaningful insights into the effectiveness of the solution.

V. *Questions for Public Comment:* Through this RFI, the CDFI Fund invites comments and responses to the following questions regarding the above-described proposed FY 2016 CDFI Prize Competition:

A. Is the proposed topic of the proposed FY 2016 CDFI Prize Competition appropriate and clearly stated?

B. Has the CDFI Fund adequately described the goals, structure and submission requirements for the proposed FY 2016 CDFI Prize Competition?

C. Do you feel that the proposed FY 2016 CDFI Prize Competition will encourage innovative approaches, which might not surface otherwise, to build the capacity of CDFIs to invest in underserved rural areas, including those that are characterized by persistent poverty?

D. As proposed, would the prize(s) enable new partnerships to increase access to capital in underserved rural areas?

E. Are the proposed prize amounts (approximately $250,000 per award) appropriate? Are there other incentives, in addition to the proposed monetary prize, such as convening the winners to share best practices that might be valuable to include as part of the proposed prize competition?

F. Are the proposed application requirements sufficient in detail for the scope of the proposed prize?

G. Are the proposed proposal evaluation criteria appropriate and sufficient in detail for this prize?

H. Do you feel that the proposed timeline and milestones are appropriate?

I. Do you have any further suggestions on how to improve the topic, eligibility and submission requirements, and evaluation criteria for the proposed FY 2016 CDFI Prize Competition?

J. Please indicate if your organization has interest in competing in the proposed FY 2016 CDFI Prize Competition, if it is convened. If not, why not?

Authority: 12 U.S.C. 4701 *et seq.;* 15 U.S.C. 3719; 12 CFR 1805.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2016–11099 Filed 5–10–16; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0261]

Proposed Information Collection (Application for Refund of Educational Contributions, VA Form 22–5281) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to process funds of contributions made by program participants who disenroll from the Post Vietnam Era Veterans Education Program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0261" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Refund of Educational Contributions, VA Form 22–5281.

OMB Control Number: 2900–0261.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and Servicemembers complete VA Form 22–5281 to request a refund of their contributions to the Post-Vietnam Veterans Education Program. Contributions made into the Post-Vietnam Veterans Education Program may be refunded only after the participant has disenrolled from the program. Request for refund of contribution prior to discharge or release from active duty will be refunded on the date of the participant's discharge or release from active duty or within 60 days of receipt of notice by the Secretary of the participant's discharge or disenrollment. Refunds may be made earlier in instances of hardship or other good reasons. Participants who stop their enrollment from the program after discharge or release from active duty, contributions will be refunded within 60 days of the receipt of their application.

Affected Public: Individuals or households.

Estimated Annual Burden: 77 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 461.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–11051 Filed 5–10–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0781]

Proposed Information Collection (Disability Benefits Questionnaire (Group 4)) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0781" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–7492 or email *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0781" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Disability Benefits Questionnaires (Group 4).

OMB Control Number: 2900–0781.

Type of Review: Revision of a currently approved collection.

Abstract: The VA Form 21–0960 series will be used to gather necessary information from a claimant's treating physician regarding the results of medical examinations. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 53,750.

Estimated Average Burden per Respondent:

i. VAF 21–0960C–3—30 minutes.
ii. VAF 21–0960C–6—15 minutes.
iii. VAF 21–0960C–7—15 minutes.
iv. VAF 21–0960C–11—15 minutes.
v. VAF 21–0960D–1—15 minutes.
vi. VAF 21–0960E–2—15 minutes.
vii. VAF 21–0960E–3—15 minutes.
viii. VAF 21–0960H–1—15 minutes.
ix. VAF 21–0960I–2—15 minutes.
x. VAF 21–0960I–3—15 minutes.
xi. VAF 21–0960I–4—30 minutes.
xii. VAF 21–0960I–5—15 minutes.
xiii. VAF 21–0960J–4—15 minutes.
xiv. VAF 21–0960L–1—30 minutes.
xv. VAF 21–0960N–3—15 minutes.
xvi. VAF 21–0960N–4—30 minutes.
xvii. VAF 21–0960Q–1—15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 160,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–11048 Filed 5–10–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–2016]

Agency Information Collection (Application for Accrued Amounts Due a Deceased Beneficiary, VA Form 21P–601) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0216" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0216."

SUPPLEMENTARY INFORMATION:

Title: Application for Accrued Amounts Due a Deceased Beneficiary, VA Form 21P–601

OMB Control Number: 2900–0216.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21P–601 is used to gather the information necessary to determine a claimant's entitlement to accrued benefits. Accrued benefits are amounts of VA benefits due, but unpaid, to a beneficiary at the time of his or her death. Benefits are paid to eligible survivors based on the priority described in 38 U.S.C. 5121(a). When there are no eligible survivors entitled to accrued benefits based on their relationship to the deceased beneficiary, the person or persons who bore the expenses of the beneficiary's last illness and burial may claim reimbursement for these expenses from accrued amounts.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 2, 2016, at 81 FR 10965.

Affected Public: Individuals or Households.

Estimated Annual Burden: 7,920 hours.

Estimated Average Burden per Respondent: 0.50 hours (30 minutes).

Frequency of Response: One-time.

Estimated Number of Respondents: 15,840 respondents.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–11054 Filed 5–10–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0249]

Proposed Information Collection (Loan Service Report, VA Form 26–6808) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administrations (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0249" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506 (c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Loan Service Report.

OMB Control Number: 2900–0249.

Type of Review: Revision of an approved collection.

Abstract: VA Form 26–6808 is used when servicing delinquent guaranteed and insured loans and loans sold under 38 CFR 36.4600. With respect to the servicing of guaranteed and insured home loans and loans sold under 38 CFR 36.4600, the holder has the primary servicing responsibility.

Affected Public: Individuals or households.

Estimated Annual Burden: 2083 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–11050 Filed 5–10–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee Charter Renewals

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Advisory Committee Charter Renewals.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee ACT (FACA), 5 U.S.C. App. 2, and after consultation with the General Services Administration, the Secretary of Veterans Affairs has determined that the following Federal advisory committees are vital to the mission of the Department of Veterans Affairs (VA) and renewing their charters would be in the public interest. Consequently, the charters for the following Federal advisory committees are renewed for a two-year period, beginning on the dates listed below:

Committee name	Committee description	Charter renewed on
Genomic Medicine Program Advisory Committee.	Provides advice on the scientific and ethical issues related to the establishment, development, and operation of a genomic medicine program within VA.	March 28, 2016.
VA National Academic Affiliations Council	Provides advice to the Secretary regarding partnerships between VA and its academic affiliates.	April 29, 2016.
Veterans' Rural Health Advisory Committee.	Provides advice to the Secretary on health care issues affecting enrolled Veterans residing in rural areas.	May 2, 2016.
*Cooperative Studies Scientific Evaluation Committee.	Provides advice on VA cooperative studies, multi-site clinical research activities, and policies related to conducting and managing these efforts; ensures that new and ongoing projects maintain high quality, are based upon scientific merit, mission relevance, and are efficiently and economically conducted.	May 4, 2016.

Committee name	Committee description	Charter renewed on
Health Services Research and Development Service Scientific Merit Review Board.	Provides advice on the fair and equitable selection of the most meritorious research projects for support by VA research funds and ensures the high quality and mission relevance of VA's legislatively mandated research and development program. Also advises on the adequacy of protection of human and animal subjects.	May 4, 2016.
Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board.	Provides advice on the scientific quality, budget, safety, and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. The proposals may address research questions within the general areas of biomedical and behavioral research or clinical science research.	May 4, 2016.
Rehabilitation Research and Development Service Scientific Merit Review Board.	Provides advice on the fair and equitable selection of the most meritorious research projects for support by VA research funds; provides advice for research programs officials on program priorities and policies; and ensures that the VA Rehabilitation Research and Development program promotes functional independence and improves the quality of life for impaired and disabled Veterans.	May 4, 2016.

*Note: The Cooperative Studies Scientific Evaluation Committee was formerly named Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee.

The Secretary has also renewed the charters for the following statutorily authorized Federal advisory committees for a two-year period, beginning on the dates listed below:

Committee name	Committee description	Charter renewed on
Advisory Committee on Minority Veterans	Authorized by 38 U.S.C. § 544. Provides advice on the administration of VA benefits for Veterans who are minority group members in the areas of compensation, health care, rehabilitation, outreach, and other services.	March 7, 2016.
Advisory Committee on the Readjustment of Veterans.	Authorized by 38 U.S.C. § 545. Provides advice to the Secretary on policies, organizational structures, and the provision and coordination of services to address Veterans' post-war readjustment to civilian life, with particular emphasis on post-traumatic stress disorder, alcoholism, other substance abuse, post-war employment, and family adjustment.	April 16, 2016.
Special Medical Advisory Group	Authorized by 38 U.S.C. § 7312. Provides advice to the Secretary and the Under Secretary for Health on matters relating to the care and treatment of Veterans and other matters pertinent to the operations of the Veterans Health Administration, such as research, education, training of health manpower, and VA/DoD contingency planning.	April 16, 2016.
Advisory Committee on Former Prisoners of War.	Authorized by 38 U.S.C. § 541. Provides advice to the Secretary on the administration of benefits for Veterans who are former prisoners of war, and to assess the needs of such Veterans in the areas of service-connected compensation, health care, and rehabilitation.	April 18, 2016.

FOR FURTHER INFORMATION CONTACT: Jeffrey Moragne, Committee Management Office, Department of Veterans Affairs, Advisory Committee Management Office (00AC), 810 Vermont Avenue NW., Washington, DC 20420; telephone (202) 266–4660; or email at *Jeffrey.Moragne@va.gov.* To view a copy of a VA Federal advisory committee charter, visit *http://www.va.gov/advisory.*

Dated: May 6, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–11103 Filed 5–10–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0784]

Proposed Information Collection (NCA Pre-Need Determination of Eligibility for Burial) Activity Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revised collection allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's eligibility for burial at a National Cemetery.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Willie Lewis, National Cemetery Administration (43D3), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *willie.lewis@va.gov.* Please refer to "OMB Control No. 2900–0784" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Willie Lewis at (202) 461–4242 or FAX (202) 501–2240.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: NCA Pre-Need Determination of Eligibility for Burial, VA Form 40–10007.

OMB Control Number: 2900–0784.

Type of Review: Revision of an approved collection.

Abstract: VA Form 40–10007 will be used to collect information from Veterans and service members with terminal illnesses and adult dependent children in hospitals and other institutions. The data will be used to determine their eligibility for burial in a National Cemetery prior to the actual time of need.

Affected Public: Individuals or households.

Estimated Annual Burden: 12,000

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 36,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–11055 Filed 5–10–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Veterans' Advisory Committee on Education will meet on June 14–16, 2016, at the Arizona State University (ASU), Tempe campus, (at Fulton Center, 300 E. University Drive, Tempe, AZ 85281) from 9 a.m. to 5 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of education and training programs for Veterans, Servicepersons, Reservists, and Dependents of Veterans under chapters 30, 32, 33, 35, and 36 of title 38, and chapter 1606 of title 10, United States Code.

The purpose of the meeting is to assist in the evaluation of existing GI Bill programs and services, review recent legislative and administrative changes to GI Bill benefits, and submit their recommendations to the Secretary.

On June 14th, the Committee will tour the ASU Tempe campus (at the Fulton Center) from 10 a.m. to 12 p.m. and receive presentations about the administration of VA's education and training programs.

On June 15th, oral statements from students and the public will be heard at the L.S. Neeb Hall, 920 S. Forest Mall, Tempe, AZ 85281 from 1:45 p.m. to 4 p.m.

On June 16th, the Committee will reconvene at the ASU Tempe campus (at the Fulton Center) to review and summarize issues raised throughout the meeting and discuss Committee work groups and next steps.

The public may submit written statements for the Committee's review to Mr. Barrett Y. Bogue, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (223D), 810 Vermont Avenue NW., Washington, DC 20420 or email at *Barrett.Bogue@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mr. Bogue at (202) 461–9800.

Dated: May 6, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–11123 Filed 5–10–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0095]

Proposed Information Collection (Pension Claim Questionnaire for Farm Income, VA Form 21P–4165)

Activity: Comment Request.

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0095" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Pension Claim Questionnaire for Farm income, VA Form 21P–4165.

OMB Control Number: 2900–0095.

Type of Review: Revision of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services, established by law, for veterans, service personnel and their survivors.

38 U.S.C. 1521 establishes a pension benefit for Veterans of a period of war who are permanently and totally disabled. 38 U.S.C. 1541 and 38 U.S.C. 1542 establish a survivor's pension benefit for the surviving dependents of Veterans of a period of war.

Entitlement to pension benefits for Veterans and their surviving dependents is based on the family's countable annual income as required by 38 U.S.C. 1503 and net worth as required by 38 U.S.C. 1522.

The information collected on VA Form 21P–4165 will be used by VA to evaluate a claimant's income and net worth related to the operation of a farm for the purpose of establishing entitlement to pension benefits and to evaluate a beneficiary's ongoing entitlement to pension benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,038 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 2,075.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–11053 Filed 5–10–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0778]

Agency Information Collection (Disability Benefits Questionnaires—Group 3) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2016.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0778" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0778" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Disability Benefits Questionnaires (Group 3).

OMB Control Number: 2900–0778.

Type of Review: Revision of a currently approved collection.

Abstract: The VA Form 21–0960 series is used to gather necessary information from a claimant's treating physician regarding the results of medical examinations. VA will gather medical information related to the claimant that is necessary to adjudicate the claim for VA disability benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 17, 2016, at pages 8129 and 8130.

Affected Public: Individuals or households.

Estimated Annual Burden: 77,500.

Estimated Average Burden per Respondent:

i. VAF 21–0960C–5—30 minutes
ii. VAF 21–0960C–8—15 minutes
iii. VAF 21–0960C–9—45 minutes
iv. VAF 21–0960G–1—15 minutes
v. VAF 21–0960G–2—15 minutes
vi. VAF 21–0960G–3—15 minutes
vii. VAF 21–0960G–4—15 minutes
viii. VAF 21–0960G–5—30 minutes
ix. VAF 21–0960G–6—15 minutes
x. VAF 21–0960G–7—15 minutes
xi. VAF 21–0960G–8—15 minutes
xii. VAF 21–0960H–2—15 minutes
xiii. VAF 21–0960K–1—15 minutes
xiv. VAF 21–0960K–2—30 minutes
xv. VAF 21–0960L–2—15 minutes
xvi. VAF 21–0960M–11—15 minutes
xvii. VAF 21–0960N–1—15 minutes

Frequency of Response: One time.

Estimated Number of Respondents: 250,000.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–11049 Filed 5–10–16; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0036]

Proposed Information Collection (Statement of Disappearance, VA Form 21P–1775) Activity Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 11, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0036" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Disappearance, VA Form 21P–1775.

OMB Control Number: 2900–0036.

Type of Review: Extension without change of a currently approved collection.

Abstract: The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services, established by law, for veterans, service personnel and their survivors. 38 U.S.C. 108 requires a formal "presumption of death" when a veteran has been missing for seven years. Entitlement to death benefits cannot be determined in these cases until VA has made a decision of presumption of death.

VA Form 21P–1775 is used to gather the necessary information to determine if a decision of presumptive death can be made for benefit payment purposes. It would be impossible to administer the survivor benefits program without this collection of information.

Affected Public: Individuals or households.

Estimated Annual Burden: 28 hours.

Estimated Average Burden per Respondent: 2 hours and 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 10.

By direction of the Secretary.

Kathleen M. Manwell,

Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–11052 Filed 5–10–16; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Oregon Spotted Frog; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2013–0088; 4500030114]

RIN 1018–AZ56

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Oregon Spotted Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Oregon spotted frog (*Rana pretiosa*) under the Endangered Species Act. In total, approximately 65,038 acres (26,320 hectares) and 20.3 river miles (32.7 river kilometers) in Whatcom, Skagit, Thurston, Skamania, and Klickitat Counties in Washington, and Wasco, Deschutes, Klamath, Lane, and Jackson Counties in Oregon, fall within the boundaries of the critical habitat designation. The effect of this regulation is to designate critical habitat for the Oregon spotted frog under the Endangered Species Act.

DATES: This rule becomes effective on June 10, 2016.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* and *http://www.fws.gov/wafwo.* Comments and materials we received, as well as some supporting documentation we used in preparing this final rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503, by telephone 360–753–9440 or by facsimile 360–753–9445.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0088, and at the Washington Fish and Wildlife Office (*http://www.fws.gov/wafwo*) (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eric V. Rickerson, State Supervisor, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive SE., Suite 102, Lacey, WA 98503, by telephone 360–753–9440, or by facsimile 360–753–9445. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a final rule to designate critical habitat for the Oregon spotted frog. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA or Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

We, the U.S. Fish and Wildlife Service (Service), listed the Oregon spotted frog as a threatened species on August 29, 2014 (79 FR 51658). On August 29, 2013, we published in the **Federal Register** a proposed critical habitat designation for the Oregon spotted frog (78 FR 53538). On June 18, 2014, we published in the **Federal Register** a proposed refinement to the August 29, 2013, proposal (79 FR 34685). Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the Oregon spotted frog. Here we are designating approximately 65,038 acres (ac) (26,320 hectares) (ha)) and 20.3 river miles (mi) (32.7 river kilometers (km)) in 14 units as critical habitat in Washington and Oregon for the Oregon spotted frog.

This rule consists of: A final rule for designation of critical habitat for the Oregon spotted frog. The Oregon spotted frog was listed as threatened under the Act. This rule designates critical habitat necessary for the conservation of the species. We have prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum and a screening analysis, which together with our narrative and interpretation of effects we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors. The analysis, dated April 30, 2014, was made available for public review from June 18, 2014, through July 18, 2014 (79 FR 34685). The analysis was made available for review a second time when we reopened the comment period from September 9, 2014, through September 23, 2014 (79 FR 53384). The DEA addressed probable economic impacts of critical habitat designation for the Oregon spotted frog. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. We have incorporated the comments into this final determination.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We solicited opinions from nine knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, and whether or not we used the best available information. Five individuals provided comments. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final designation. We also considered all comments and information received from the public during the comment period.

Previous Federal Actions

The Service listed the Oregon spotted frog as a threatened species on August 29, 2014 (79 FR 51658). A list of the previous Federal actions can be found in the final listing rule and in the proposal to designate critical habitat (78 FR 53538, August 29, 2013).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Oregon spotted frog during three comment periods. The first comment period associated with the publication of the proposed rule (78 FR 53538) opened on August 29, 2013, and closed on November 12, 2013. We opened a second comment period on June 18, 2014, to allow for comment on the DEA and associated perceptional effects memorandum, as well as a revised proposed rule with changes to the critical habitat designation; this period closed on July 18, 2014 (79 FR 34685). A third comment period opened September 9, 2014, to allow for additional comment on the DEA and associated perceptional effects memorandum, and on the changes to proposed critical habitat we announced on June 18, 2014; it closed on September 23, 2014 (79 FR 53384). We received one request for a public hearing; however, the request was from a county in California where the species is not known to currently occur (see Response to Comment 22). However, we did hold a public hearing on October 21, 2013, in Lacey, Washington. In addition, multiple informal public meetings were held in the Bend and Klamath Falls areas in Oregon. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and DEA during these comment periods.

During the three comment periods, we received comments from 114 commenters directly addressing the August 29, 2013, proposed critical habitat designation and the June 18, 2014, revision to proposed critical habitat. During the October 21, 2013, public hearing, four individuals or organizations made statements on the designation of critical habitat for the Oregon spotted frog. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received were grouped into six general issues specifically relating to the proposed critical habitat designation for the Oregon spotted frog and the June 18, 2014, proposed revision to the designation, and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from nine knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses pertinent to the proposed critical habitat rule from five peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the Oregon spotted frog. Two of the peer reviewers provided additional information, clarifications, and suggestions to improve the final critical habitat rule. We evaluated and incorporated this information into this final rule when and where appropriate to clarify this final designation. Two peer reviewers provided substantive comments on the proposed designation of critical habitat for the Oregon spotted frog, which we address below. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) Comment: One peer reviewer expressed concern that Unit 7 does not sufficiently delineate the habitat currently used by the population of Oregon spotted frogs in that area, specifically Camas Prairie. The western boundary was drawn around what appear to be wetlands on aerial photographs, but does not account for the primary wintering sites, such as springs, small streams, and immediately adjacent streambanks.

Our response: This comment was received during the comment period for our original proposed critical habitat, published in the **Federal Register** on August 29, 2013 (78 FR 53538). We subsequently modified the boundaries of Unit 7 to include overwintering habitat and included this boundary refinement in the revised critical habitat proposed in the **Federal Register** on June 18, 2014 (79 FR 34685). We did not receive comments that disagreed with the Unit 7 boundary refinements; therefore, the final designation for this unit includes, according to the best available scientific information, the known habitats that meet the year-round needs of the species in this unit.

(2) Comment: One peer reviewer stated that, in his experience, egg-laying sites are depressions that hold shallow water in a nearly flat topography and frequently do not sustain water for the entire 4-month larval rearing period. The reviewer stated that it is only critical that these depressions maintain water during the embryonic development and early larval periods to allow tadpoles to move to more permanent waters to complete their development. The success of these breeding pools is based on the ability of free-swimming tadpoles to move out to more permanent waters sometime after hatching, usually within about 2 weeks. Therefore, the total period of time that these areas must retain water, from egg-laying to out-migration, is closer to 6 weeks.

Our response: The primary constituent element (PCE) characteristic of inundation for a minimum of 4 months per year is applied to both the breeding and rearing habitats. This is not counter to the information discussed by the peer reviewer. However, throughout the range of the species, not all breeding areas are shallow, seasonally inundated areas that cannot support rearing, such that tadpoles must out-migrate. For example, some breeding areas in Oregon and Washington retain water throughout the rearing phase. Due to the variations across the range, we believe the characteristic of inundation for a minimum of 4 months is appropriate.

Comments From Federal Agencies

(3) Comment: One commenter from the U.S. Environmental Protection Agency, two State commenters (one from Washington Department of Ecology (WDOE) and one from Washington Department of Fish and Wildlife (WDFW), Whatcom County, and one member of the public expressed the opinion that the portion of Swift Creek included in the proposed critical habitat may not be capable of supporting a healthy Oregon spotted frog population due to the environmental conditions caused by the Sumas Mountain landslide.

Our response: We concur that Swift Creek and the segments of the Sumas River downstream of its confluence with Swift Creek likely lack the PCEs and may not be capable of providing habitat in the future. Therefore, based on the information provided by the commenters, we have revised Unit 1 to remove these areas from critical habitat.

(4) Comment: A commenter with the U.S. Forest Service (USFS) and three public commenters suggested expanding the proposed critical habitat designation in Unit 12 to include newly identified occupied habitat at the headwaters of Jack Creek (Yellow Jacket Spring area) and extend the downstream extent to Lily Camp. One commenter asked that all wet meadow habitat adjacent to Jack Creek be explicitly mentioned in the text as critical habitat. The public commenters also recommended expanding proposed critical habitat to include Round Meadow, an unoccupied but apparently suitable site that was not proposed as critical habitat.

Our response: Critical habitat in Unit 12 was proposed for expansion on June 18, 2014 (79 FR 34685), extending critical habitat approximately 3.1 mi (5 km) downstream along Jack Creek to O'Connor Meadow. This expansion includes the location described as Yellow Jacket Spring by the commenters. However, we did not include the area beyond O'Connor Meadow as far south as Lily Camp due to the lack of detections south of Yellow Jacket Spring. This is in compliance with the 3.1-mi (5-km) rule set, as defined in our description of critical habitat (78 FR 53546). To the best of our ability, we believe that the entire wet meadow habitat associated with Jack Creek has been included in critical habitat in Unit 12. We have no information in our files to suggest that Round Meadow is currently occupied by Oregon spotted frogs. Technically, Round Meadow is part of the Deschutes Basin; however, it is not hydrologically connected via surface water to any other Oregon spotted frog location in the Deschutes Basin nor the Klamath Basin, including Jack Creek. Thus Round Meadow does not fit the criteria for designating unoccupied critical habitat.

(5) Comment: A commenter from the USFS observed that the National Wetlands Inventory (NWI) data used, in part, to map critical habitat for the Oregon spotted frog does not capture all potential wet habitats along rivers, streams, lakes, and ponds and concluded that the proposed critical habitat does not accurately encompass all potential habitat. The commenter then recommended adding language to the rule to address areas of potential habitat outside mapped critical habitat in order to be clear as to whether these lands will be treated as critical habitat.

Our response: We are aware that the NWI does not map all potential wet habitats that are consistent with our PCEs. Where we knew the data was incomplete, we employed National Agriculture Imagery Program (NAIP) digital imagery, hydrologic and slope data, and our best professional judgment to identify and map the areas containing the PCEs. Critical habitat, as defined and used in the Act, is the specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical or biological features essential for the conservation of the species and which may require special management considerations or protection, and specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. All the areas designated as critical habitat for the Oregon spotted frog meet the definition of critical habitat and contain the PCEs for the species' habitat; conversely, areas of potential habitat outside of the designated critical habitat boundaries could not be determined to meet the definition of critical habitat or contain the PCEs and are, therefore, not included in this final designation. However, the lateral extent of critical habitat along river corridors will vary because of their dynamic nature.

Critical habitat along river corridors in Units 1 through 5 is intended to encompass rivers/streams/creeks and all areas within the associated hydrologic floodplain, including adjacent seasonally wetted areas that contain any components of the PCEs. The text within the criteria section and unit descriptions has been revised to better define the features included in this final designation. The commenter did not provide specific details of areas believed to be incorrectly mapped; therefore, no additional changes beyond the revised descriptions have been made to critical habitat boundaries.

(6) Comment: A commenter from USFS raised a concern about the scale of critical habitat mapping in an area of proposed Unit 10. The area of concern is in the Willamette National Forest on the south fork of the McKenzie River between two unnamed marshes. The width of the stream, as mapped for the purposes of critical habitat, is 2 meters wide at some points, and the stream channel itself may shift depending on seasonal flow. Considering this scenario, the commenter suggested a 100-foot (ft) buffer on each side of the segment of stream in question, stating that such an amendment would not only accommodate future changes in the location of the stream, but would also protect habitat immediately adjacent to the stream, which the USFS indicated should be considered as important for protecting the physical and biological features that are essential to the conservation of the Oregon spotted frog. Similarly, a commenter from WDFW suggested that proposed critical habitat along streams would be improved by making allowances for natural disturbance processes, such as flooding and American beaver (*Castor canadensis*) activity, which might affect the size and location of the wetted areas along streams.

Our response: Regarding the McKenzie River polygon width, we recognize that there are areas within the critical habitat designation where our mapped polygons may not precisely delineate all of the habitat features that constitute critical habitat for the spotted frog due to limitations of the data used to delineate the boundaries. We also recognize that the characteristics of the area designated as critical habitat may fluctuate over time as water is impounded by beavers or natural disturbances affect the riverine hydrology. We mapped critical habitat using NAIP imagery, NWI information, and other resources at a scale of 1:24,000, which has inherent limitations that preclude the specificity the commenters desire. While we acknowledge the data limitations implicit in our data source, the addition of a 100-ft buffer along all rivers would encompass an area beyond what is necessary for the survival and recovery of the Oregon spotted frog. However, see the *Criteria Used To Identify Critical Habitat* section and our response to Comment 5 pertaining to the in-text description of areas that are considered to be critical habitat along designated river miles (see Table 2 for a summary of approximate river mileage and ownership within proposed critical habitat units, and also descriptions of Units 1 through 5).

Comments From States

Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition." Comments received from the State regarding the proposal to designate critical habitat for the Oregon spotted frog are addressed below.

(7) Comment: A commenter from the WDOE suggested that text in the proposed rule appears to confuse the Sumas River in Whatcom County, Washington, with the Chilliwack River in British Columbia, Canada. The commenter asserted that in one part of the rule the Sumas River is described as a tributary to the Lower Chilliwack River watershed, which the commenter believed to be correct, but pointed out that elsewhere in the rule the Sumas River was used interchangeably with the Chilliwack River and/or the Lower Chilliwack River, which the commenter felt was incorrect.

Our response: The commenter's confusion arises from the multiple geographic scales that could be used to describe the distribution of the Oregon spotted frog. Because we are considering the species across its range, we attempted to use a consistent naming convention across the range, specifically we chose to use the hydrological unit code (HUC) 8 (4th field or sub-basin) or HUC 10 (5th field or watershed) delineation. In this case, the Sumas River is a tributary to the Lower Chilliwack River watershed (HUC 10) and to the Fraser River sub-basin (HUC 8), and we chose to use the HUC 10 name to delineate Unit 1 consistent with the convention used for the other critical habitat units.

(8) Comment: The WDFW questioned why some areas were not included in

Critical Habitat Unit 4: Black River. The agency stated that we did not clearly identify whether the wetlands (including seasonally flooded wetlands and pastures) associated with Upper Dempsey Creek, Upper Salmon Creek, and lower Beaver Creek were included. The agency further commented that these segments have not been well-surveyed, and the possibility remains that Oregon spotted frogs occur in the wetlands associated with these segments. In addition, the agency noted that Allen Creek between Tilly Road and Interstate 5 (through Deep Lake and Scott Lake) is not mapped as critical habitat and that, although Oregon spotted frogs are not currently known to occur in this area, there are many unsurveyed wetlands and the possibility remains that Oregon spotted frogs may occur here.

Our response: Critical habitat, as defined and used in the Act, is the specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical or biological features essential for the conservation of the species and which may require special management considerations or protection, and specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. We agree that, throughout the range, there are many areas that may provide the types of habitat needed by the Oregon spotted frog but have yet to be surveyed; however, the available information is not sufficient to support a conclusion that all of these areas are essential for the conservation of the species.

To the best of our ability, we have included the seasonally flooded wetlands and pastures associated with Upper Dempsey Creek, Upper Salmon Creek, and lower Beaver Creek when they were within 3.1 mi (5 km) of currently known occupied areas. Please see response to Comment 5 for further clarification of areas included in the river mile segments. Areas beyond 3.1 mi (5 km) of currently known occupied areas were outside of our mapping criteria. As noted by WDFW, the areas of Allen Creek between Tilly Road and Interstate 5 are not occupied, there have been no indications that Oregon spotted frogs are or will be able to use Deep Lake and Scott Lake, nor did WDFW provide information to support our finding that these areas are essential for the conservation of the species; therefore, we were unable to adequately justify revising the boundaries of Unit 4 to include these areas.

(9) Comment: The WDFW wanted to highlight the preparation of a Habitat Conservation Plan (HCP) that will cover multiple species across Washington State where they occur on WDFW-owned Wildlife Areas and requested that the Service provide the same consideration for exclusion of West Rocky Prairie Wildlife Area under section 4(b)(2) of the Act as the Service is providing to the Deschutes Basin Multispecies HCP.

Our response: The Service acknowledges the valuable effort on the part of WDFW to prepare the state-wide Wildlife Areas HCP. The protective provisions provided by completed HCPs are an important part of balancing species conservation with the needs of entities to manage their lands for public and private good. In the absence of an approved HCP, there are no concrete assurances of funding or implementation of the measures included in such a plan. Because there is no approved HCP for either the West Rocky Prairie Wildlife Area or the Deschutes Basin Multispecies area, we are unable to exclude either of these areas from the proposed designation of critical habitat.

(10) Comment: The Washington Department of Natural Resources (WDNR) expressed support for the designation of critical habitat on the Trout Lake Natural Area Preserve (NAP) in the absence of a completed Management Plan, stating that designation of critical habitat would be appropriate and may help strengthen conservation support at the site.

Our response: In our proposed designation of critical habitat for the Oregon spotted frog (78 FR 53538), we stated that we were considering the exclusion of the Trout Lake NAP if conservation efforts identified in a revised and finalized NAP management plan would provide a conservation benefit to the Oregon spotted frog. Based on comments from WDNR, we understand that the management plan for this area cannot be updated and finalized before final designation of critical habitat. Therefore, with WDNR's support, Trout Lake NAP was not excluded from critical habitat. We appreciate the WDNR's commitment to managing the Trout Lake NAP for the benefit of the Oregon spotted frog.

(11) Comment: The WDNR stated that the proposed critical habitat in areas regulated by WDNR presents a potential conflict between the long-term Washington State Forest Practices Rules and their associated HCP, citing a misalignment between management strategies for wetlands and riparian areas and the habitat maintenance and enhancement needs for the Oregon spotted frog. Because the Oregon spotted frog is not a covered species under the Forest Practices HCP and the proposed listing decision does not draw a specific determination regarding the "potential for incidental take of the species while conducting forest management activities covered by the Forest Practices HCP," the regulating State agency expressed its desire to "avoid a circumstance where actions approved to benefit one set of listed species may potentially adversely impact another listed species."

Our response: The Oregon spotted frog, as a species, is not generally dependent on a forested landscape; therefore, there is a lower likelihood that Oregon spotted frogs or their habitat will be negatively affected by forest management activities. That said, Oregon spotted frogs may occur in areas delineated as forested wetlands (*e.g.*, along Trout Lake Creek) or located downstream or downslope from forest management activities, and management agencies should be aware of the activities that may negatively impact them. An example of such activity may include upslope management actions that alter the hydrology of streams, springs, or wetlands upon which Oregon spotted frogs depend. Activities that are currently allowed under the Forest Practices HCP do have the potential to impact Oregon spotted frogs or their habitat. Conversely, disallowing management actions that could improve habitat for Oregon spotted frogs could hinder or prolong their recovery. For example, a lack of options to manage trees and/or shrubs that encroach into the wetlands could reduce the availability of suitable egg-laying habitat. We note that areas of concern are limited to a very small subset of lands included or covered under the Forest Practices HCP. If there is a process for landowners to obtain a variance from WDNR in order to reestablish or enhance Oregon spotted frog habitat, the Service recommends that WDNR make that process available to willing landowners.

Comments From Tribes

(12) Comment: The Yakama Nation asserted that Critical Habitat Unit 6 lies entirely within the boundaries of the Yakama Reservation, despite the statement in the proposed rule that the Service "determined that the proposed designation does not include any tribal lands" (78 FR 53553). The Yakama Nation further stated that Critical Habitat Unit 6 is within the Tract D Area and explained that this area was included in the Yakama Nation's

homelands, which was expressly reserved by the Treaty of 1855 "for the exclusive use and benefit" of the Confederated Tribes and Bands of the Yakama Nation. The Yakama Nation contends that Tract D was erroneously excluded from the Yakama Reservation's original boundaries and directed the attention of the Service to the correction of this mistake through the return of Tract D to the Yakama Nation in 1972 under Executive Order 11670. The Yakama Nation requested that the critical habitat designation be amended to reflect consideration of the Yakama Nation's concerns regarding long-term management implications and objected to the proposed Oregon spotted frog critical habitat designation for the area entitled, Critical Habitat Unit 6: Middle Klickitat River.

Our response: While we understand that the Yakama Nation disputes the ownership in this area, it is our current understanding that the Federal lands are under ownership of the U.S. Fish and Wildlife Service's Conboy Lake National Wildlife Refuge. Based upon consultation with the Yakama Nation, it is our understanding that the Nation would like assurances that designation of critical habitat will not infringe on tribal treaty rights that may be exercised on the lands that fall within Unit 6. FWS sought information from NWR staff and Yakama Nation representatives regarding exercising tribal treaty rights on the lands included in the critical habitat designation. Whether or not treaty rights have been exercised on these lands is unclear; however, it is our opinion that designation of critical habitat for the Oregon spotted frog on lands owned by the Conboy Lake NWR will not affect the exercise of treaty rights by the Yakama Nation.

Public Comments

Service Authorities and Policy Compliance

(13) Comment: One commenter observed that the annual water regulation of the Deschutes River for the purpose of irrigation has had negative impacts on the populations of fish and other wildlife for which the river provides habitat. The commenter expressed frustration about mortality to wildlife and questioned the utility of a Federal agency listing another species and designating associated critical habitat under the Act to address these impacts.

Our response: The Act requires the Service to designate critical habitat for listed species to the maximum extent prudent and determinable. This designation will not, standing alone, suffice to address impacts to Oregon spotted frogs that result from water management, which is governed primarily by Oregon law. The Service is working with irrigation districts and other entities in the Deschutes River Basin to develop a habitat conservation plan aimed at minimizing the impacts of irrigation diversions on Oregon spotted frogs and listed fish species.

(14) Comment: One commenter expressed concern about the lack of regulatory oversight for federally permitted grazing where it may overlap with critical habitat on USFS land.

Our response: The Service coordinates and provides technical assistance to other Federal agencies, including the USFS, on a broad scope of work. The USFS has been proactive in developing site management plans specific to Oregon spotted frogs. However, development of their Forest Plans, land use classifications, standards and guidelines, and project planning remains under the purview of the Federal agencies developing such products. Additionally, if a federally authorized, funded, or conducted action could affect a listed species or its critical habitat, the responsible Federal agency is then required to enter into consultation with the Service under section 7 of the Act.

(15) Comment: One commenter expressed concern that groundwater pumping conveyed as surface water for long distances or across lands that may be considered critical habitat will be regulated and ultimately result in less water available for irrigation. Currently groundwater pumping and use is monitored and regulated by the Oregon Water Resources Department in accordance with State law. The commenter is concerned that additional regulation could ultimately result in less water available for irrigation. In addition, the commenter expressed the opinion that groundwater pumping practices should not be identified as an action that could negatively affect Oregon spotted frog habitat because such a connection is not supported by science.

Our response: The critical habitat designation will have no effect on pumping or conveyance of groundwater where there is no Federal nexus to that action. On actions where there is a Federal nexus the Service will analyze groundwater pumping effects to Oregon spotted frog critical habitat on a case-by-case basis. Our current understanding of the sources of surface water within the designated critical habitat is that the seasonally flooded areas are fed by winter rains or snowmelt, not groundwater pumping. Pumping of groundwater can result in lower water levels in groundwater systems, diminished flow of springs, and reduced streamflow (Gannett *et al.* 2007, pp. 59–60, 65), and could adversely affect wetland habitats occupied by Oregon spotted frog that are supported by springs. Therefore, the Service appropriately identified groundwater pumping as a potential threat to Oregon spotted frog. A determination of whether such pumping poses a threat to the frog's habitat at any particular site will depend on site-specific analysis. The Service assesses impacts on critical habitat only in the context of consultation with Federal agencies on the effects of their actions. Hence, if groundwater pumping in a particular instance does not involve a nexus with a Federal agency action, designation of critical habitat for the Oregon spotted frog will have no impact on such pumping.

(16) Comment: One commenter stated that the Service's Director should not be able to certify whether the critical habitat rule will have a significant economic impact. The commenter speculated that the decisionmaking process represents a conflict of interest and does not allow any protections for the private landowners.

Our response: We assume the commenter is referring to our determination under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) that this final critical habitat designation will not have a significant economic impact. Under section 605 of the RFA, "the head of the agency" can make a certification "that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The Director of the Service is in the approval chain for Service designations of critical habitat. However, the Principal Deputy Assistant Secretary for Fish and Wildlife and Parks within the Department of the Interior has the ultimate signature authority for Service designations of critical habitat.

As described in our response to Comment 17 and later in this document under Required Determinations, under section 7 of the Act only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, our position is that only Federal action agencies will be directly regulated by this designation, and Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, we certify that, if promulgated, the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

(17) Comment: A representative of Modoc County, California, expressed the opinion that the Service had not complied with the Regulatory Flexibility Act (RFA) when proposing critical habitat.

Our response: Oregon spotted frogs are not known to occur in Modoc County, and we did not propose to designate critical habitat in that county. When publishing a proposed or final rule that may have a significant economic impact on a substantial number of small entities, a Federal agency is required by the RFA to prepare and make available for public comment a regulatory flexibility analysis describing the effects of the rule on the small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions) directly regulated by the rulemaking itself, and the potential impacts to indirectly affected entities. This designation of critical habitat will directly regulate only Federal agencies, which are not by definition small entities. And as such, this designation of critical habitat would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis was not required.

However, because we acknowledge that, in some cases, third-party proponents of actions subject to Federal agency permitting or funding may participate in a section 7 consultation, our DEA considered the potential effects to these third-party project proponents. The DEA was made available for a 30-day comment period beginning on June 18, 2014, and for another 14 days beginning September 9, 2014. The economic analysis determined that the designation has the potential to cause ranchers and landowners to perceive that private lands will be subject to use restrictions. However, the designation of critical habitat for the Oregon spotted frog is not expected to trigger additional requirements under State or local regulations that would restrict private land use.

(18) Comment: One commenter stated that the Service is required to conduct a National Environmental Policy Act (NEPA) compliance analysis before finalizing the designation of proposed critical habitat in Washington, Oregon, and California.

Our response: It is the position of the Service that preparation of environmental analysis pursuant to NEPA is not required prior to designation of critical habitat outside of the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit. We published a notice in the **Federal Register** outlining our reasoning for this determination on October 25, 1983 (48 FR 49244), and our position has been upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

(19) Comment: One commenter requested an extension of the public comment period for the proposed critical habitat designation due to the Federal Government shutdown that occurred from October 1–16, 2013. The commenter stated that the shutdown effectively truncated the initial public comment period by 16 days. During the comment period opened for the DEA and proposed critical habitat designation on June 18, 2014, another commenter requested a reopening of the comment period to give the public additional time to review the DEA, including the perceptional effects memo.

Our response: The Service is committed to receiving and evaluating feedback from all interested parties. We regret any difficulties experienced during the government shutdown. The comment period for the proposed critical habitat rule was extended an extra 15 days from October 28, 2013, until November 12, 2013. In addition, another comment period of 30 days was available from June 18, 2014, to July 18, 2014. We also reopened the comment period for an additional 14 days from September 9, 2014, to September 23, 2014.

(20) Comment: A representative of Modoc County, California, asserted that the Service failed to follow Federal procedures when publishing the proposal to designate critical habitat for the Oregon spotted frog. The commenter cited case law holding that the Service is required to give actual notice to local governments of its intent to propose a species for listing.

Our response: The ESA at 16 U.S.C. 1533(b)(5)(A)(ii) requires the Secretary to provide actual notice of a proposed critical habitat designation only to each county in which the species at issue is believed to occur. The Oregon spotted frog is not currently known or believed to occur in either Modoc or Siskiyou Counties in California; therefore, the Service did not provide notification of proposed critical habitat for the species to these counties. Notice was provided, however, to the counties where Oregon spotted frog does occur; these include Klickitat, Skagit, Skamania, Thurston, and Whatcom in Washington, and Deschutes, Jackson, Klamath, Lane, and Wasco Counties in Oregon.

(21) Comment: One commenter stated that the Service failed to release viewable maps of the proposed designated habitat in the La Pine, Oregon, basin, and that residents and other stakeholders need to see in sufficient detail the areas that the Service proposes to designate.

Our response: The Service provided the required maps in the proposal to designate critical habitat (78 FR 53538). In addition, the Service made maps with aerial photos and finer scale critical habitat unit boundaries available at *http://www.regulations.gov* and *http://www.fws.gov/wfwo.* The geographic information system shapefiles were also available for download at *http://www.fws.gov/wfwo.* In addition, the Service convened a public meeting in the La Pine, Oregon, area where larger scale maps were available for viewing. Therefore, the Service believes we have provided clear maps to inform the general public about the critical habitat designation.

(22) Comment: One commenter requested both a public meeting and a public hearing and specifically requested that they be held in Siskiyou County, California.

Our response: The Service held a public hearing in Lacey, Washington, on October 21, 2013. Public meetings were conducted in Deschutes County, Oregon, in December 2013 and Klamath County, Oregon, in September 2013. The Service did not accommodate the request to hold a public meeting or a public hearing in Siskiyou County, California, because we did not propose to designate any critical habitat in Siskiyou County, California, and as such, there are no affected parties in that county.

(23) Comment: One commenter expressed concern that the designation of critical habitat would preclude small mining activities in southern Oregon and northern California and suggested that the designation of critical habitat would convert land from other ownership or designation to ownership by the Service as part of the wildlife refuge system.

Our response: The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, through consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply. If a consultation were to find that actions would result in the destruction or adverse modification of affected habitat, the obligation of the Federal action agency and the landowner in this case is not to restore or to recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat. In light of this provision of the law, the Service does not agree that the designation of critical habitat will have the effects suggested by the commenter as implementation of any reasonable and prudent alternatives would not result in a change in land ownership.

Critical Habitat Delineation Criteria

(24) Comment: Several commenters were unclear about the criteria used to designate critical habitat. Several commenters requested that unoccupied and currently unsuitable habitat be designated as critical habitat. Other commenters stated that areas included in the proposed designation of critical habitat should be removed for various reasons (*e.g.,* fluctuating water levels and property boundaries) or that boundaries should be adjusted.

Our response: We mapped critical habitat at a large spatial scale (1:24,000) using NWI and NAIP imagery, per parameters for publication within the Code of Federal Regulations. Because of the scale of mapping, there may be areas where the delineation of critical habitat in populated areas may not precisely include all of the habitat with PCEs, or may include some areas that do not have the PCEs. Based upon comments received, we refined the boundaries of the critical habitat delineation to align more closely with the areas containing the PCEs, in particular along the Deschutes River. However, due to the scale of mapping, the final critical habitat designation may still include developed areas such as lands covered by buildings, pavement, and other structures. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text and are not designated as critical habitat (See paragraph (3) in the rule portion of this document.).

We acknowledge there may be portions of critical habitat units that are not known to be used, may not be consistently used, or may be currently unsuitable (see *Criteria Used To Identify Critical Habitat*). However, we have determined that all of the critical habitat units meet our definition of occupied at the time of listing and contain sufficient elements of physical or biological features to support Oregon spotted frog life-history processes. In addition, there are areas within these critical habitat units that are considered to be essential for the conservation of the species (and are, therefore, designated as critical habitat) even though Oregon spotted frog use or the presence of the physical or biological features may be uncertain, seasonal, or sporadic. Both areas outside the geographical area occupied by the species at the time of listing, as well as unsuitable areas located greater than 3.1 mi (5 km) upstream of habitat currently known to be used by Oregon spotted frog, are not likely to support Oregon spotted frogs without human intervention (*i.e.,* translocation), and we have not determined that reestablishment in these unoccupied or unsuitable areas is essential for the conservation of the species. Therefore, there is no Oregon spotted frog critical habitat designated in unoccupied or unsuitable areas outside of currently known occupied sub-basins or farther than 3.1 mi (5 km) from habitat known to be used at the time of listing.

One commenter suggested that Tumalo Creek in the Upper Deschutes River sub-basin be considered as critical habitat for Oregon spotted frog. Although Tumalo Creek contains wetland habitats similar to those that support Oregon spotted frog, there are no historical or current records that indicate that spotted frogs inhabit the Tumalo Creek watershed. Furthermore, Tumalo Creek is greater than a 3.1-mi (5-km) distance from occupied habitat. Therefore, Tumalo Creek does not meet our criteria for critical habitat designation.

Reservoirs in the Upper Deschutes River sub-basin are used by Oregon spotted frogs. Although the current system of reservoir management results in significant fluctuations in water levels within the reservoirs, the increasing water depth from November to March provides overwintering habitat, and inundation of wetland areas along the reservoir margins allows for breeding to occur in the spring. The Service determined that PCEs are present in the reservoirs and that these PCEs vary spatially and temporally with reservoir storage and release operations. For example, Oregon spotted frog breeding habitat shifts depending on water elevation in the reservoirs. When water levels are too high for frogs to access breeding habitat, they move to shallow margins where habitat may be available. The Deschutes River and associated wetlands downstream of Wickiup Dam experience reduced water levels during the reservoir storage season (October through mid April), such that PCEs shift seasonally depending on water elevations in the areas downstream of the dam. Therefore, all of these geographic areas are included in the critical habitat designation.

(25) Comment: Two commenters expressed confusion regarding the exclusion of deep water in our description of Critical Habitat Subunit 8B in the preamble to the proposed rule and how the buffers were developed for the proposed critical habitat. One commenter questioned the application of buffers around waters that connect occupied habitat.

Our response: See the responses to Comments 5 and 6 regarding our revised text description of areas along designated river miles that are considered to be critical habitat. We have removed language referring to the exclusion of deep water in the description of Critical Habitat Subunit 8B in the preamble to the final rule.

(26) Comment: A few commenters were unclear about why the Service proposed critical habitat in wetlands and areas that have been extensively farmed in the past because most of these areas already receive protection under existing regulations and conservation programs, making additional regulation unnecessary. Two commenters stated that residential properties should be excluded from critical habitat because the existing regulatory mechanisms are adequate to protect the species and the designation of critical habitat would not provide additional regulatory benefits.

Our response: We acknowledge that there are multiple regulatory mechanisms in both Washington and Oregon that afford some conservation benefits to the Oregon spotted frog. However, as determined in our final listing determination (79 FR 51658, August 29, 2014), current regulatory mechanisms are not adequate to reduce or remove threats to Oregon spotted frog habitat, particularly the threat of habitat loss and degradation. While some setbacks are required, not all "wetlands" are equivalent, and not all counties or States have equivalent regulations. Additionally, not all Oregon spotted frog habitat is classified as "wetland" under county or State regulations. In any case, while existing regulatory mechanisms are considered when listing a species, current regulatory protection is not a consideration in the determination of whether an area meets the definition of critical habitat. We are designating critical habitat within areas that we identified as occupied by the species at the time of listing that contain the physical or biological features essential to the conservation of the species, and which may require special management consideration or protection.

We are especially concerned about ongoing loss of wetlands due to both development (including urban and agricultural) and wetland modification from restoration and conservation programs that are actively planting willows and other riparian shrubs in wetland and riparian areas that currently provide egg-laying habitat. In the absence of a Federal nexus, designation of critical habitat does not impose an additional regulatory burden on private lands, but does serve to educate private landowners, as well as State and county regulators, of the importance of the area for the species.

(27) Comment: One commenter expressed concern that no tribal lands were proposed as critical habitat despite appearing to have wetland habitat of similar quality to the wetlands proposed as critical habitat.

Our response: The identification of critical habitat followed a specified protocol as set out in the proposed critical habitat rule and does not take land ownership into consideration. There are no areas currently known to be occupied by Oregon spotted frogs on tribally owned lands, nor are there areas not currently occupied that we determined to be essential for the conservation of the species. Therefore, Tribal lands have not been designated as critical habitat.

(28) Comment: One commenter stated an opinion that the distribution of proposed critical habitat was strategically spread across the range of assumed historical Oregon spotted frog habitat and asked, if frogs were found in these areas, why would it not be possible that more populations of Oregon spotted frogs may be discovered to exist in other similar habitats?

Our response: The distribution of critical habitat includes all sub-basins/watersheds that are currently known to be occupied. This distribution does not encompass the historical range. Sixteen sub-basins in Puget Sound, Willamette Valley, and northern California, within which Oregon spotted frogs were historically documented, have not been included in the designation. While it is possible that other populations of Oregon spotted frogs may be located in the future, critical habitat units were established in sub-basins with positive detections no older than 2000.

(29) Comment: Several commenters highlighted the value of beaver activity in maintaining suitable Oregon spotted frog habitat, pointing out that some areas adjacent to proposed critical habitat units currently have suitable habitat that was not included in the proposed designation. Two of these commenters suggested additional areas that they believed met the criteria for critical habitat due to beaver activity.

Our response: As stated above, we propose critical habitat in the specific areas within the geographical area occupied by a species at the time it is listed on which are found those physical or biological features essential for the conservation of the species and which may require special management considerations or protection. In addition, if such areas are not adequate to provide for the conservation of the species, we may propose critical habitat in specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. For more information on how we determined what areas to include in the final designation for the Oregon spotted frog, see our discussion in the section *Criteria Used To Identify Critical Habitat.*

Based on information received, we proposed a refinement of unit 14 in the **Federal Register** on June 18, 2014 (79 FR 34685). The refinement included an additional portion of the Buck Lake drainage system of canals, as well as a portion of Spencer Creek. Not all of the inclusions suggested by the commenters were included in the proposed refinements because, based on our delineation process, the refinements were limited to 3.1 mi (5 km) from the last known location occupied by Oregon spotted frog. We did not receive comments that disagreed with our refinements, therefore, the final designation includes the areas added through the refinement process.

(30) Comment: A commenter from Jackson County, Oregon, argued that critical habitat should not be designated in Jackson County because only 245 ac (99 ha) of land in the county were proposed as critical habitat, which represents a very small proportion of the overall proposed acreage and is not essential to the recovery of the species. In addition, the commenter was concerned that the critical habitat proposed in this county would have a negative economic impact due to the current regulations governing the proposed acreage under the Oregon and California Railroad Revested Lands (O&C Lands) Act of 1937, which is administered by the Bureau of Land Management (BLM).

Our response: The criteria for the designation of critical habitat can be found in the proposed rule, this final rule, and in the responses to Comments 8, 24, and 29. As required under the Act, the Service delineated the specific areas within the geographical area occupied by the species at the time of listing on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. Regardless of the small amount of critical habitat in Jackson County, Oregon, these areas meet the definition of critical habitat for the species.

The O&C Lands Act mandates the protection of watersheds as part of its regulatory function. The Oregon spotted frog population at Parsnips Lakes occurs entirely within the boundary of the Cascade-Siskiyou National Monument (CSNM). The presidential proclamation that established the monument reserved the CSNM in recognition of its remarkable ecology and to protect a diverse range of biological, geological, aquatic, archeological, and historic objects. The CSNM Management Plan (BLM 2008) promotes the protection, maintenance, restoration, or enhancement of monument resources as required by the proclamation. Because Oregon spotted frog conservation falls in line with the purpose and priorities of the CSNM, the critical habitat designation is not anticipated to add additional restrictions in this area.

(31) Comment: One commenter requested that the Service clarify, and amend where necessary, the rule to omit manmade features such as golf courses, fairways, greens, cart paths, mowed rough areas, lawns, turf grass, landscaped areas, open meadows, pastures, walking paths, and other areas of nonnative vegetation. The rationale provided was that such areas have been excluded from other critical habitat designations because these manmade features are actively managed and no longer resemble native habitat.

Our response: The Service determined in the final listing document (79 FR 51658, August 29, 2014) that the vegetated areas supporting Oregon spotted frogs are largely management-dependent and in many cases no longer contain native vegetation. Most of the known breeding areas, particularly in Washington, are located on lands that could be termed mowed rough areas, open meadows, pastures, and other areas of nonnative vegetation. The areas in Unit 8, specifically concerning to the commenter, are being excluded from critical habitat because the lands are being managed under a management plan in such a way that the benefits of excluding outweigh the benefits of including these areas in critical habitat.

The final critical habitat designation may still include developed areas such as lands covered by buildings, pavement, and other structures. Manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located that fall inside critical habitat boundaries shown on the maps of this final rule have been excluded by text and are not designated as critical habitat. See *Criteria Used To Identify Critical Habitat* and the responses to Comments 5, 6, and 24 for further information.

Occupancy

(32) Comment: Two commenters questioned the Service's conclusion that the upper Klamath basin is occupied and argued that surveys conducted as recently as 2011 confirm that no Oregon spotted frogs occur in the areas where critical habitat has been proposed.

Our response: We provided citations in both our proposed listing (78 FR 53582, August 29, 2013) and proposed critical habitat (78 FR 53538, August 29, 2013) rules for the sources we relied upon for evidence that all three critical habitat units (Units 12, 13, and 14) in the Klamath basin are occupied by the Oregon spotted frog. These sources include data provided by the USFS, U.S. Geological Survey (USGS), BLM, and the Klamath Marsh National Wildlife Refuge (NWR). All of these sources document occupancy as recently as 2012, and we have received additional information further documenting occupancy in 2013. Therefore, we believe there is sufficient evidence supporting our determination of occupancy in the Klamath basin, specifically, within critical habitat Units 12, 13, and 14.

(33) Comment: One commenter stated that the Service lacks population trend data for 90 percent of the known Oregon spotted frog populations and, without this information, the Service cannot determine how designating particular areas as critical habitat will affect those populations.

Our response: A listing determination is an assessment of the best scientific and commercial information available regarding the past, present, and future threats to the Oregon spotted frog. While the loss of Oregon spotted frogs across the historical distribution and the status of the species within the current range is considered in the listing decision, the designation of critical habitat is focused on the ongoing and future threats to the PCEs and the special management necessary for the conservation of the species. All of the designated critical habitat units were known to be occupied by the species at the time of listing and contain the physical or biological features essential to the conservation of the Oregon spotted frog and require special management considerations or protection.

Primary Constituent Elements

(34) Comment: One commenter expressed the opinion that wetted corridors alone do not necessarily provide Oregon spotted frog habitat and we should consider rephrasing PCE 2 to define aquatic movement corridors as those that contain slow-moving water, gradual topographic gradient, and emergent vegetation with a minimum summer water temperature (not provided by the commenter), and the presence of connectivity to other suitable habitats. The commenter stated that corridors that may be cold, high-velocity streams with no aquatic vegetation should not be considered critical habitat because frogs would avoid these areas. In addition, the commenter opined that movement corridors that do not connect occupied or suitable habitats (*e.g.*, no suitable habitat downstream) should be removed from critical habitat.

Our response: While we acknowledge that Oregon spotted frogs likely prefer slow-moving water, PCE 2 is intended to represent both movement corridors that are necessary for year-round movements between breeding, rearing, dry season, and overwintering habitat, as well as corridors that facilitate dispersal between occupied areas or into new areas. In addition, in many cases, streams may not maintain high velocity throughout the year. Therefore, these areas may also be defined with characteristics consistent with PCE 1 in addition to PCE 2.

(35) Comment: One commenter questioned our lack of information regarding the presence and impacts of warm-water fishes in Oregon spotted frog areas because the information was extrapolated from impacts on other amphibian species.

Our response: The microhabitat requirement of the Oregon spotted frog, unique among native ranids of the Pacific Northwest, exposes it to a number of introduced fish species (Hayes 1994, p. 25), such as smallmouth bass (*Micropterus dolomieu*), largemouth bass (*Micropterus salmoides*), pumpkinseed (*Lepomis gibbosus*), yellow perch (*Perca flavescens*), bluegill (*Lepomis macrochirus*), brown bullhead (*Ameriurus nebulosus*), black crappie (*Pomoxis nigromaculatus*), warmouth (*Lepomis gulosus*), and fathead minnow (*Pimephales promelas*) (Hayes and Jennings 1986, pp. 494–496; Hayes 1997, pp. 42–43; Hayes *et al.* 1997; McAllister and Leonard 1997, p. 14; Engler 1999, pers. comm.) and mosquitofish (*Gambusia affinis*) (Wydoski and Whitney 2003, p. 163; Johnson 2008, p. 5). Information presented in the *Physical or Biological Features* discussion is directly derived from Oregon spotted frog-specific studies. Factor C (Disease or Predation) in our final listing document (79 FR 51658, August 29, 2014) includes a more thorough discussion of the impacts resulting from the presence of nonnative fish species. Some of these references involve other western amphibians and closely related frog species. We often find it informative to consider appropriate research on closely related species, particularly when species-specific research is lacking. In this case, there is both direct Oregon spotted frog evidence, as well as evidence derived from closely related frog species. Further information on the sub-basins within which warm-water fish are known to occur is available in the Threats Synthesis document available at *www.regulations.gov* (docket #FWS–R1–ES–2013–0013). Accordingly, we maintain that the presence of warm-water fishes requires special management considerations, and, therefore, changes to the *Physical or Biological Features* section are unnecessary.

(36) Comment: One commenter had questions about the definition of "barriers to movement" and requested clarification on the parameters of the environment that constitute barriers.

Our response: Impediments to upstream movement may include, but are not limited to, hard barriers such as dams, impassable culverts, and lack of water, or biological barriers, such as lakes or rivers/creeks without refugia from predators. Additional text clarifying this definition has been added to the *Physical or Biological Features* section of the preamble to this rule and the actual rule text.

(37) Comment: One commenter disagreed with the Service's conclusion that PCEs are present and require special management on privately owned lands in Unit 6. The commenter further stated that Oregon spotted frogs are found in the unit because of the existing management on the private lands.

Our response: Unit 6 is currently occupied by the Oregon spotted frog. The species carries out all life stages (egg laying, rearing, and over-wintering) in this unit, on all land ownerships. All of the PCEs are present in this unit; however, it is not a requirement of critical habitat designation that all of the acres within each unit contain all of the PCEs. As the commenter points out, land managers are "managing" the lands, such that Oregon spotted frogs remain present, which demonstrates that special management is required. Thus, the lands included in the designation for Unit 6 meet all of the criteria required to be designated as critical habitat. However, a number of these private lands that were proposed for critical habitat in Unit 6 have been excluded from the final designation under section 4(b)(2) of the Act (see Comment 42 below and *Exclusions Based on Other Relevant Impacts* section).

Exclusions

(38) Comment: Several commenters questioned the benefits of including private lands in the proposed designation of critical habitat and argued that the designation of critical habitat on private lands would discourage the kind of land stewardship that is beneficial to the Oregon spotted frog and its habitat. These commenters further argued that designation of critical habitat on private property could potentially limit future partnerships between the Service and private land holders. Some of these commenters requested that all private lands be excluded from critical habitat, stating that the exclusion of private lands would provide a greater conservation benefit than inclusion.

Our response: Under the Act, critical habitat is defined as those specific areas within the geographical area occupied by the species at the time it is listed on which are found the physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside of the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. All of the critical habitat units designated for Oregon spotted frog were known to be occupied at the time the species was listed (79 FR 51658, August 29, 2014). The Act does not provide for any distinction between land ownerships in those areas that meet the definition of critical habitat. However, the Act does allow the Secretary to consider whether certain areas may be excluded from final critical habitat. An area may be excluded under section 4(b)(2) of the Act if the benefits of excluding it outweigh the benefits of including it in critical habitat, unless that exclusion would result in the extinction of the species. With respect to private landowners, the Secretary has excluded private lands from the final designation of critical habitat in cases where conservation agreements or other partnerships resulted in a conclusion that the benefits of excluding those areas outweigh the benefits of including them in critical habitat (see *Exclusions Based on Other Relevant Impacts* section of this document). Unless a private landowner has an existing conservation agreement or an established partnership with the Service before the finalization of critical habitat (that provides a demonstrable conservation benefit to the Oregon spotted frog and its habitat), it is unlikely that there is a basis for concluding that the benefit of exclusion outweighs the benefit of inclusion.

In areas occupied by a federally listed species and designated as critical habitat, Federal agencies are obligated under section 7 of the Act to consult with us on actions that may affect that species to ensure that such actions do not jeopardize the species' continued existence or adversely modify critical habitat. However, in the case of privately owned lands, there is a low likelihood of a Federal consultation responsibility (nexus) because Federal agencies rarely carry out discretionary actions on private land, and future Federal actions that might trigger such a Federal nexus are limited. Therefore, the regulatory benefit of including these lands in critical habitat is reduced.

We encourage any landowner concerned about potential take of listed species on their property to contact the Service (see **FOR FURTHER INFORMATION CONTACT**) to explore options for developing a safe harbor agreement or HCP that can provide for the conservation of the species and offer management options to landowners associated with a permit to protect the party from violations under section 9 of the Act.

(39) Comment: One commenter requested that the Service consider exclusion of all areas that would be covered under the proposed Upper Deschutes Basin Multispecies HCP. Alternately, the commenter requested that if these areas are not excluded from the designation of critical habitat, that these areas be removed from critical habitat upon completion of the HCP. Conversely, one commenter stated the Service should not exclude these areas because of the uncertainty regarding the final agreed-upon conservation measures applicable to the Oregon spotted frog.

Our response: When deciding whether to exclude an area from designation of critical habitat under section 4(b)(2) of the Act, the Service assesses the level of assurance an entity can provide that it will actually fund and implement the conservation measures identified within the plan. The same process would hold true when evaluating the Upper Deschutes Basin Multispecies HCP. Because we have not received a complete draft of the HCP document to review in order to make an assessment and would require a final approved HCP, the Service declined to exclude these areas at this time. Removal of designated critical habitat upon future completion of an HCP would require an evaluation of the HCP through a separate rulemaking process to revise critical habitat.

(40) Comment: One commenter stated that it is important for the Service to understand that the private landowners in Klickitat County, Washington, utilize irrigation water via their Washington State recorded and recognized water rights. The commenter further asserted that in Washington water rights are considered property rights and any regulatory actions that the Service might implement that limits or impairs those rights could be viewed as a taking and may be grounds for litigation from the private landowners. Finally, the commenter suggested that potential litigation could be avoided by not designating critical habitat on private property in Klickitat County.

Our response: Though private lands may be subject to State or local governmental regulatory mechanisms, the designation of critical habitat on private lands has no Federal regulatory impact on the owner of such lands unless a Federal nexus is present. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply. If a consultation were to find that actions would result in the destruction or adverse modification of affected habitat, the obligation of the Federal action agency and the landowner is not to restore or to recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat. In the Service's experience with other species, it is generally possible to devise such alternatives in a way that permits continued economic use of designated lands (also see response to comment 53).

(41) Comment: One commenter requested the Service to consider excluding private lands within the Crosswater Resort that are managed according to the Crosswater Environmental Plan and private lands within the Sunriver Community that are managed according to the Sunriver Great Meadow Management Plan.

Our response: Based on our analysis of these Plans and our determinations that the benefits of excluding lands covered by these plans outweigh the benefits of including them, we are excluding private lands within the Crosswater Resort and Sunriver Community from critical habitat. See *Exclusions Based on Other Relevant Impacts* for the complete analyses.

(42) Comment: Three commenters requested that the Service consider excluding private lands within Unit 6 that will be operated under the Coordinated Resource Management Plan and Conservation Agreement between Glenwood Valley Ranchers and the Service.

Our response: Based on our analysis of this Agreement and our determinations that the benefits of excluding lands covered by these plans outweigh the benefits of including them, we are excluding those private lands covered under the Agreement from critical habitat. See *Exclusions Based on Other Relevant Impacts* for the complete analyses.

(43) Comment: One commenter requested that the Service consider excluding private lands within Unit 3 that will be operated under the Coordinated Resource Management Plan and Conservation Agreement between Skagit Valley Ranchers and the Service.

Our response: Upon further coordination between the commenter and the Service, this request for exclusion was withdrawn.

Economic Analysis

(44) Comment: Two commenters expressed concern that critical habitat would be designated before an economic analysis of the effects of critical habitat would be completed. Both commenters stated that their preferred timing of events would have included the availability of the completed economic analysis before the publication of the proposed critical habitat.

Our response: Under the Act, the Service is required to consider economic impacts prior to finalizing the proposed designation of critical habitat, but not prior to the proposal of critical habitat. The DEA was made available for public review and comment on June 18, 2014, in the **Federal Register** (79 FR 34685) and in a separate comment period that opened September 9, 2014 (79 FR 53384). We have considered all comments received on the DEA and proposed critical habitat designation in this final designation.

(45) Comment: One commenter pointed out what appears to be an inconsistency within our Incremental Effects Memorandum (IEM) regarding how we expect private landowners in Washington to behave (*i.e.,* fence-off lands and discontinue management) versus private landowners in Oregon to behave (*i.e.,* designing projects to be compatible with Oregon spotted frog needs) in response to a critical habitat designation. The commenter believes there is a lack of data to support this distinction and that Oregon landowners are "almost certain" to respond similarly to landowners in Washington.

Our response: Even though the designation of critical habitat for Oregon spotted frog will not put any additional regulatory burden on private landowners in either Oregon or Washington, the reaction of landowners in Washington to the designation may be influenced by their previous experience working to comply with Washington State's stream management guidelines.

The State of Washington developed water quality standards for temperature and intergravel dissolved oxygen that were approved by the Environmental Protection Agency in February 2008. The temperature standards are intended to restore thermal regimes necessary to protect native salmonids and sustain viable salmon populations. Water quality management plans developed by Washington State recommend planting trees and shrubs and excluding cattle from riparian areas to improve thermal conditions for salmonids. Some Washington landowners find it more expedient to fence off the riparian areas and reduce the perceived conflict between a State water quality regulation and the habitat necessary to support a listed species. The IEM anticipates that some landowners in Washington may respond to the designation of Oregon spotted frog critical habitat by installing fencing because that action is already a preferred option for these landowners in dealing with the proximity of their land to the habitat of listed salmonid species.

The areas within proposed critical habitat in Oregon do not support ESA-listed salmonid species and, therefore, fencing of the riparian areas along the Little Deschutes River, where most of the private grazing lands occur, is not a common practice nor is it regulated by the implementation of water quality management plans. The Service held public meetings in Sunriver and La Pine, Oregon, in December 2013 for private landowners within the proposed critical habitat designation. During the meetings, the Service explained that grazing does not always result in a negative impact to critical habitat for the Oregon spotted frog. Rather, low-intensity grazing could be used to maintain breeding habitat for spotted frogs by improving ground-level solar exposure and maintaining early seral emergent vegetation within wetlands. The Service does not anticipate that private lands in Oregon will be fenced as they are in Washington State where water quality standards are designed to support salmon. The Service is already working with local Soil and Water Conservation Districts in Oregon to implement appropriate conservation practices for Oregon spotted frogs within the proposed critical habitat designation.

(46) Comment: Several commenters assert that the Economic Screening Analysis does not adequately consider impacts to private landowners and local communities. One commenter states that the Economic Screening Analysis should include impacts associated with reductions in land value and income of landowners.

Our response: As stated in the analysis, the quality of Oregon spotted frog habitat is closely linked to species survival. Specifically, the Service states that "in occupied critical habitat, it is unlikely that an analysis would identify a difference between measures needed to avoid the destruction or adverse modification of critical habitat from measures needed to avoid jeopardizing the species." As such, section 7 impacts in occupied areas are anticipated to be limited to administrative costs. These costs include costs to private landowners, where applicable.

In addition to these costs, the analysis discusses potential perceptional impacts that the critical habitat designation could have on the value of private land. The analysis recognizes that a property that is inhabited by a threatened or endangered species, or that lies within a critical habitat designation, could have a lower market value than an identical property that is not inhabited by the species or that lies outside of critical habitat. This lower value, if any, would result from a perception that critical habitat will preclude, limit, or slow development, or somehow alter the highest and best use of the property (*e.g.,* grazing). Public attitudes about the restrictions and costs that the Act can impose can cause real economic effects to the owners of property, regardless of whether such restrictions are actually imposed. Over time, as public understanding of the actual regulatory burden placed on designated lands grows, particularly where no Federal nexus compelling section 7 consultation exists, the perceptional effect of critical habitat designation on private properties may subside.

(47) Comment: One commenter stated that extensive Federal funding for restoration activities in the Klamath Basin that is stipulated by various settlement agreements through the Klamath Basin Adjudication process will create a Federal nexus that is unaccounted for in the DEA.

Our response: Our forecast of future actions likely to result in section 7 consultations include consultations associated with participation in Natural Resource Conservation Service and Farm Service Agency programs such as the Wetland Reserve Enhancement Program, the Conservation Reserve Enhancement Program, and the Environmental Quality Incentives Program in the critical habitat area. As such, our analysis does include a Federal nexus and includes administrative cost estimates related to section 7 consultations for the restoration projects in these areas.

(48) Comment: One commenter asked if the Economic Screening Analysis surveyed private landowners in order to detail types of land use.

Our response: A survey of private landowners was not conducted as part of the Economic Screening Analysis. However, based on information in the proposed rule, the Incremental Effects Memorandum, as well as visual examination of satellite imagery of the designation, we determined that the proposed critical habitat for the Oregon spotted frog on privately owned lands is located mainly in areas that are seasonally flooded, protected from development by county restrictions, and/or are used for grazing or crop agriculture; the primary use of land within the designation is for livestock grazing.

(49) Comment: Two commenters took issue with the Service's assumption that Federal agencies will treat unoccupied areas as if they were occupied for purposes of section 7 consultation, stating that relying on this assumption causes the Economic Screening Analysis to underestimate the economic impacts of critical habitat designation for the Oregon spotted frog. In unoccupied areas, the commenters believe that incremental economic impacts should include costs associated with project modifications, delay, and restrictions on land use.

Our response: In the proposed critical habitat rule (78 FR 53538, August 29, 2013), the Service proposed to designate areas that were currently "not known to be occupied." The Service has since reclassified these areas as "occupied" based on the fact that these areas are within occupied sub-basins, contain habitat features similar to known occupied areas, are hydrologically connected (via surface waters) to occupied areas, and do not contain barriers that would inhibit Oregon spotted frog movement between occupied areas. The Service recognizes that the physical or biological features may only be present seasonally in some areas because aquatic systems are not static; water levels fluctuate between seasons, severe flood events occur, and beavers abandon and recolonize sites. As a result of these changing habitat conditions, some areas may only be occupied intermittently or seasonally; however, we consider the entire critical habitat unit to be occupied. Therefore, impacts in these areas are anticipated to be limited to administrative costs.

(50) Comment: One commenter stated that some of the private lands considered in the perceptional effects analysis are used for hay production rather than grazing and the value of irrigated land is considerably higher than non-irrigated rangeland.

Our response: The analysis recognizes that the proposed critical habitat for the Oregon spotted frog on privately owned lands is located primarily in areas that are seasonally flooded, protected from development by county restrictions, and/or are used for grazing or crop agriculture. It also recognizes that public perception of critical habitat impacts may diminish land values by some percent of these total values, though it is unlikely that total land values would be lost due to these perceived economic impacts. However, because data limitations prevent us from estimating the size of this percent reduction or its attenuation rate, the analysis used USDA National Agricultural Statistics Service pasture-land-per-acre values data to estimate the per-acre value for agricultural lands. We applied this value to all private acres other than those considered to be developable for residential use. To the extent that the value of some of these acres is, in fact, higher, this total value would be underestimated. However, we reiterate that perceived economic effects are likely to represent only a portion of the total value of the properties. Hence, it is uncertain to what extent this effect would be understated by figures reported.

(51) Comment: One commenter asserted that the Service has the ability to sue or threaten to sue private landowners if the Service deems take or potential harm to the species or if the Service deems that modification of critical habitat has occurred.

Our response: Designation of critical habitat has no effect on the liability of non-Federal parties for actions that may affect listed species. While private landowners may be liable for civil or criminal penalties under section 9(a)(1) of the Act for actions that harm the Oregon spotted frog, any such liability would arise from the listing of the species, and not from the designation of critical habitat. Absent evidence of harm to Oregon spotted frogs, the Act does not give the Service authority to institute an enforcement action for modification of critical habitat on private lands.

(52) Comment: One commenter stated that the Economic Screening Analysis fails to consider costs associated with "potentially modified management of storage levels and releases from Wickiup, Crane Prairie, and Crescent Lake Reservoirs." The commenter included an Economic Review conducted by Highland Economics, which concludes that a 10 percent reduction in water to Deschutes River water districts would result in total direct economic losses of approximately $4.3 million related to farm income and hydroelectric generation losses, and additional indirect and induced regional losses of approximately $3.5 million. The Economic Review also suggests that reduction in water supplies could have adverse impacts on recreation and tourism in the area.

Our response: As stated in Section 2, the Economic Screening Analysis considers effects of the designation of critical habitat that are incremental to the baseline for the analysis. The baseline includes the economic impacts of listing the species under the Act, even if the listing occurs concurrently with critical habitat designation. Wickiup, Crane Prairie, and Crescent Lake Reservoirs are occupied by the Oregon spotted frog (see the responses to comments 24 and 46). Because the quality of Oregon spotted frog habitat is closely linked to species survival, the Service states that "in occupied critical habitat, it is unlikely that an analysis would identify a difference between measures needed to avoid the destruction or adverse modification of critical habitat from measures needed to avoid jeopardizing the species." Therefore, most costs associated with section 7 impacts to Oregon spotted frog habitat at these reservoirs would be included in the baseline, and any incremental section 7 costs associated with the critical habitat designation are anticipated to be limited to administrative costs.

(53) Comment: One commenter stated that the Economic Screening Analysis should take into account beneficial uses of water rights. The commenter further stated that there are numerous privately held water rights for diversion and use of water totaling tens of thousands of acre-feet within Unit 6, Middle Klickitat River. The commenter mentioned one specific water right claim within Unit 6 of 33,500 acre feet, which the commenter estimated could be valued at $25 million to $122 million. The commenter also stated that the issue of takings is addressed in the supplemental proposed rule (79 FR 34685, June 18, 2014) where it states that it is not likely that economic impacts on a property owner would be of a sufficient magnitude to support takings action. The commenter questioned whether the Service considered the value of water rights and the economic impacts associated with restricting the beneficial use of these rights when it made this determination regarding the likelihood of takings.

Our response: The issue that the commenter raises rests on an assumption that the presence of critical habitat designation would restrict use of the water rights held by private landowners whose lands fall within the critical habitat designation. However, the rationale for this assumption is not explained. Indeed, it is unlikely that any restrictions on the beneficial use of water rights would occur as a result of critical habitat designation for two primary reasons. First, many actions that involve the beneficial use of water rights do not involve a Federal nexus; hence, critical habitat could have no direct effect. Second, as noted previously in this document, we consider the proposed critical habitat areas to be occupied by the species. Thus, we would expect that, even if water rights are held on a system that involved a Federal nexus, and a consultation occurred that resulted in a change in the availability of water in the system for beneficial use, this action would occur even without critical habitat designation and, hence, is not appropriately characterized as an incremental impact of critical habitat designation.

(54) Comment: Multiple commenters expressed concern about the economic impact of the designation of critical habitat on grazing and associated activities. One commenter stated that the Economic Screening Analysis does not provide a complete analysis of impacts to grazing conducted on Federal lands because grazing on Federal lands could be restricted, removed, or modified. Specifically, the commenter feared that critical habitat designation could delay turn-out dates for cattle grazing or result in other seasonal restrictions. One commenter stated that the Economic Screening Analysis should include costs per animal unit months (AUM) associated with the feeding of hay to cattle and use of alternative pastures during non-use periods. One commenter also stated that the Service should consider impacts to haying including those related to altered planting and harvest dates, or irrigation schedules.

Our response: See the response to Comment 52. Consultations for grazing activities on Federal lands are anticipated in areas proposed as critical habitat for the Oregon spotted frog. However, economic impacts of critical habitat designation are expected to be limited to additional administrative effort to consider adverse modification in section 7 consultations. This finding is based on the following factors: (1) In occupied areas, activities with a Federal nexus will be subject to section 7 consultation requirements regardless of critical habitat designation, due to the presence of the listed species; (2) in areas not known to be occupied, agencies are in most cases likely to treat areas as potentially occupied due to their proximity to occupied areas; and (3) project modifications requested to avoid adverse modification are likely to be the same as those needed to avoid jeopardy.

(55) Comment: One commenter stated that the Economic Screening Analysis is inconsistent in how it presents incremental costs. The commenter noted that the Economic Screening Analysis presents incremental costs as costs associated with all known future actions at one point, and as costs in a typical year at another point.

Our response: The Economic Screening Analysis includes all known probable projects that may affect the critical habitat designation which may require consultation under section 7 of the Act. Timing of many of these projects is unknown, thus the analysis conservatively assumes that all projects would occur in the first year following designation (approximately a total of $190,000 in administrative costs), even though it is likely some projects will not be implemented that quickly. In the summary of the Screening Analysis (p. 15), we say, "The economic impacts of implementing the rule through section 7 of the Act are expected to be limited to additional administrative effort to consider adverse modification in section 7 consultations, which are not expected to exceed $200,000 in a typical year." If $190,000 is anticipated to be the maximum (most conservative) total administrative cost of the critical habitat designation incurred in a year, then a typical year would not have greater administrative costs than $200,000.

(56) Comment: Two commenters stated that the Service does not show costs of section 7 consultation to a private landowner.

Our response: Private landowners are not involved in section 7 consultation unless there is a nexus with a Federal agency action, such as issuance of a permit to a private landowner. Exhibit 3 of the Economic Screening Analysis presents average consultation costs applied in the analysis. The costs estimates are based on data from Federal Government Schedule Rates and a review of consultation records from several Service field offices across the country conducted in 2002. Exhibit 3 separates costs specific to third parties, which includes private landowners involved in section 7 consultations. Third party costs range from between $260 and $880 per consultation. For further clarification, see response to Comment 54.

(57) Comment: One commenter stated that the Economic Screening Analysis is inadequate in its consideration of perceptional costs. The commenter questioned the use of a bounding analysis and states that the Economic Screening Analysis should quantify specific perceptional impacts rather than simply concluding that these impacts are more than zero but less than $100 million. The commenter also states that the analysis' consideration of perception costs is flawed because it defines the incremental perceptional costs too narrowly. Another commenter suggested that the Service show the reduction in private land values by multiplying per-acre values by critical habitat acres across the range of the Oregon spotted frog.

Our response: The findings on perceptional impacts presented in the Economic Screening Analysis are supported by the memorandum on Supplemental Information on Perceptional Effects on Land Values. In this memorandum, we estimate the total land value for developable acres in Unit 9 of the designation to be approximately $42 million. In addition, we estimate the total value of private acreage used for grazing in other units to be approximately $12 million by applying U.S. Department of Agriculture (USDA) National Agricultural Statistics Service pasture land per-acre values. Because data availability limits our ability to estimate what percentage of these values would be lost as a result of perceptional effects, we conservatively estimate that the full value is lost. Therefore, we conclude that the critical habitat designation for the Oregon spotted frog is unlikely to generate costs exceeding $100 million in a single year.

(58) Comment: One commenter stated that the Economic Screening Analysis should consider the loss of Federal lands intermingled with private lands and entire pastures adjacent to critical habitat. The commenter stated that the closing off of proximate riparian areas may result in negative impacts to the value and income utility of large swaths of pastureland. The commenter went on to state that the benefits from these pasture lands are often higher than the value of the land, and suggested that the Economic Screening Analysis consider the annual loss of reduced benefits of the land rather than the one-time value. The commenter further suggested quantifying the costs of fencing and developing alternative water sources.

Our response: Grazing activities on private lands typically do not have a Federal nexus and, therefore, would not be directly affected by section 7 consultation. In a section 7 consultation with a Federal agency, the Service may recommend excluding grazing from certain riparian areas; however, we anticipate that we would do so because of the presence of the listed frog, and not solely because the areas are critical habitat. Therefore, other than some additional administrative costs, potential economic impacts associated with these actions, including the cost of fencing and water source development, as well as any quantifable loss in benefit of the land, are anticipated to occur even absent critical habitat designation and are, therefore, considered part of the baseline for the economic analysis. Any measures to avoid adverse modification of critical habitat would be the same as those required by the Service to avoid jeopardy to the species.

In addition to administrative costs, the Economic Screening Analysis recognizes potential perceptional impacts that the critical habitat designation could have on private land value. Public attitudes about the limits and costs that the Act may impose can cause real economic effects to the owners of property, regardless of whether such limits are actually imposed. Over time, the perceptional effect of critical habitat designation on properties may subside as the public gains a better understanding of the regulatory burden, or lack thereof, placed on designated lands (particularly where no Federal nexus compelling section 7 consultation exists). Economic benefits of grazing lands are captured by the one-time land values used in our analysis.

(59) Comment: Multiple commenters stated that the screening analysis only focuses on costs and ignores benefits of the designation. Several commenters suggested that tourism and recreation would benefit from the designation of critical habitat for the Oregon spotted frog, highlighting the contributions that protected riverine ecosystems bring to the local economy. Two commenters requested that the economic analysis specifically take into consideration the economic benefits that the designation of critical habitat could impart to Oregon in tourism and recreation dollars based on the preservation of healthy riverine ecosystems. One commenter specifically identified benefits to fisheries as being excluded from the analysis. One commenter suggested that the economic analysis be conducted by an independent third party in order to examine the true economics, including the benefits of a healthier river.

Our response: Portions of the economic analysis were conducted by an independent third party. As stated in Section 5 of the screening analysis, the primary intended benefit of critical habitat designation for the Oregon spotted frog is to support the species' long-term conservation. Critical habitat designation may also generate ancillary benefits, which are defined as favorable impacts of a rulemaking that are typically unrelated, or secondary, to the statutory purpose of the rulemaking. Critical habitat aids in the conservation of species by protecting the PCEs on which the species depends. To this end, management actions undertaken to conserve a species or habitat may have coincident, positive social welfare implications, such as increased recreational opportunities in a region or improved property values on nearby parcels. Quantification and monetization of species conservation benefits requires information on: (1) The incremental change in the probability of frog conservation that is expected to result from the designation; and (2) the public's willingness to pay for such beneficial changes. If water management activities change as a result of the critical habitat designation, various benefits could occur within aquatic ecosystems, including improvements in the quality of recreational activities. If perceptional effects cause changes in future land use, benefits to the species and environmental quality may also occur. However, due to existing data limitations, we are unable to assess the magnitude of such potential benefits.

(60) Comment: One commenter stated that the Screening Analysis should consider whether the benefits of exclusion of a particular area outweigh the benefits of specifying that area as critical habitat. One commenter stated that the Screening Analysis overstates the conservation benefits that may result from the proposed designation. The commenter stated that the Screening Analysis discusses benefits in only a very general way, which results in an overstatement of the conservation benefits of the proposed designation.

Our response: The lack of quantification of benefits is not intended to suggest that the proposed designation will not result in benefits. As stated in Section 5 of the Screening Analysis, quantification and monetization of species conservation benefits requires information on the incremental change in the probability of Oregon spotted frog conservation that is expected to result from the designation and the public's willingness to pay for such beneficial changes. These sorts of data are unavailable for the frog, thus precluding quantification of benefits.

(61) Comment: One commenter stated that the Screening Analysis should consider small business impacts. The commenter also disagreed with the statement that, because no small entities are directly regulated by the rulemaking, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

Our response: Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Federal agencies are only required to evaluate the potential incremental impacts of a rulemaking on directly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction or adverse modification of critical habitat) imposed by critical habitat designation. Under these circumstances, it is the Service's position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the critical habitat rule will not have a significant economic impact on a substantial number of small entities. Because certification is possible, no regulatory flexibility analysis is required.

Summary of Changes From Proposed Rule

We are designating a total of 65,038 ac (26,320 ha) and 20.3 river mi (32.7 km) of critical habitat for the Oregon spotted frog. We received a number of site-specific comments related to critical habitat for the species, completed our analysis of areas considered for exclusion under section 4(b)(2) of the Act or for exemption under section 4(a)(3) of the Act, reviewed the application of our criteria for identifying critical habitat across the range of these species to refine our designations, and completed the final economic analysis of the designation as proposed. We fully considered all comments from the public and peer reviewers on the proposed rule and the associated economic analysis to develop this final designation of critical habitat for Oregon spotted frog. This final rule incorporates changes to our proposed critical habitat based on the comments that we received and have responded to in this document.

Some technical corrections to the document including our final designation of critical habitat reflect the following changes from the proposed rule as summarized here:

(1) Based on comments received from Whatcom County, WDOE, WDFW, and the Environmental Protection Agency, we have revised Unit 1 by removing Swift Creek and the Sumas River downstream from the confluence with Swift Creek. The final critical habitat designation is reduced by 137 acres (55 hectares) and 3.2 river mi (5.1 river km) from the proposed rule.

(2) In the proposed rule, we did not identify the scale at which occupancy was to be determined. Therefore, the proposed rule included occupied and "not known to be occupied" segments within a single critical habitat unit. In this final rule, we have clarified the scale of occupancy to be a sub-basin (hydrologic unit code 8, 4th field watershed) or 5th field watershed when more appropriate (hydrologic unit code 10). Therefore, all designated critical habitat units are known to be occupied at the time the species was listed in 2014, and language pertaining to "not known to be occupied" critical habitat has been removed. For further information, see *Criteria Used To Identify Critical Habitat.*

(3) Trout Lake Natural Area Preserve was not excluded, based on comments received from WDNR.

(4) Based on comments received regarding the complexity with implementing the textual exclusion of the deep-water areas, we have removed language referring to the exclusion of deep water from the unit description of Critical Habitat Subunit 8B in the preamble to this final rule.

(5) Based on comments received, we have revised the boundaries of the critical habitat delineation within Units 8 and 9 using NAIP imagery to align more closely with the areas containing the PCEs. The areas where boundaries were refined are primarily along the Deschutes and Little Deschutes Rivers where developed areas do not provide PCEs. These refinements resulted in a net removal of approximately 45 ac (18 ha) in Subunit 8a and 207 ac (84 ha) in Unit 9. In Subunit 8A, a segment of the Deschutes River was removed from final critical habitat designation because it did not contain the PCEs nor could it contain PCEs in the future due to the geometry of the river channel (narrow and steep gradient) and distance (*i.e.,* greater than 3.1 mi (5 km)) from known populations of Oregon spotted frogs. This segment of the Deschutes River (approximately 88 ac (36 ha) of proposed critical habitat was also ground-verified for presence of PCEs, and the Service determined that the PCEs were not present.

(6) Minor corrections in acres and river miles were made to correct errors made in the area calculations found between proposed and final. Updated ownership layers were used to calculate final acres/river miles, resulting in increased acres/river miles for some land ownerships (Units 4, 6, and 13) and decreased acres/river miles for others (Units 4 and 12), even though no other changes were made. In Unit 7, 6 ac (2 ha), were incorrectly double-counted in the proposed refinement (79 FR 34685, June 18, 2014), and the final critical habitat acres have been adjusted accordingly.

(7) A total of 3,083 ac (1,248 ha) has been excluded under section 4(b)(2) in three units: 2,627 ac (1,062 ha) in Unit 6; 335 ac (136 ha) in Subunit 8a; and 121 ac (49 ha) in Unit 9.

Due to these changes in our final critical habitat designation, we have updated unit descriptions and critical habitat maps, all of which can be found later in this document. This final designation of critical habitat represents a reduction of 3,463 ac (1,401 ha) and 3.2 river mi (5.1 river km) from our proposed critical habitat for Oregon spotted frog for the reasons detailed above.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (PCEs such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. PCEs are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the Oregon spotted frog from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on August 29, 2013 (78 FR 53538), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on August 29, 2014 (79 FR 51658). We have determined that the Oregon spotted frog requires the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

The Oregon spotted frog is the most aquatic native frog species in the Pacific Northwest, as it is the only frog species that does not have a terrestrial life stage. It is found in or near perennial bodies of water, such as springs, ponds, lakes, sluggish streams, irrigation canals, and roadside ditches. For completion of their life cycle, Oregon spotted frogs require shallow, stable water areas for egg and tadpole survival and development; perennial, deep, moderately vegetated pools for adult and juvenile survival in the dry season; and perennial water overlying emergent vegetation for protecting all age classes during cold wet weather (Watson *et al.* 2003, p. 298; Pearl and Hayes 2004, p. 18). This scenario essentially equates to "an expansive meadow/wetland with a continuum of vegetation densities along edges and in pools and an absence of introduced predators" (Watson *et al.* 2003, p. 298).

Oregon spotted frogs exhibit fidelity to seasonal pools throughout all seasons (breeding, dry, and wet) (Watson *et al.*

2003, p. 295), and these seasonal pools need to be connected by water, at least through the spring and again in the fall, for frogs to access them. Subadult and adult frogs may be able to make short terrestrial movements, but wetted movement corridors are preferred. A wetted movement corridor with a gradual topographic gradient (less than or equal to three percent) is necessary to enable tadpole movement out of shallow egg-laying sites into deeper, more permanent water, as water levels recede during the dry season (Watson *et al.* 2003, p. 298; Pearl and Hayes 2004, p. 20). Impediments to upstream movement may include, but are not limited to, hard barriers such as dams, impassable culverts, lack of water, and biological barriers, such as lakes or rivers/creeks without refugia from predators.

Therefore, based on the information above, we identify the following physical or biological features needed by Oregon spotted frogs to provide space for their individual and population growth and for normal behavior: (1) Perennial bodies of water (such as, but not limited to springs, ponds, lakes, and sluggish streams) or other water bodies that retain water year round (such as irrigation canals or roadside ditches) with a continuum of vegetation densities along edges; (2) a gradual topographic gradient that enables movement out of shallow oviposition (egg-laying) sites into deeper, more permanent water; and, (3) barrier-free movement corridors.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The ecosystems utilized by Oregon spotted frogs have inherent community dynamics that sustain the food web. Habitats, therefore, must maintain sufficient water quality to sustain all life stages, as well as acceptable ranges for maintaining the underlying ecological community. These key physical parameters include pH, dissolved oxygen, temperature, nutrients, and uncontaminated water (see Water Quality and Contamination is the Final Listing Document (79 FR 51688–51690).

For tadpoles and frogs living in productive wetland habitats, food is not usually a limiting factor. Post-metamorphic Oregon spotted frogs are opportunistic predators feeding on live animals found in or near water (important prey species information is provided in the life-history section of our final listing rule published in the **Federal Register** on August 29, 2014 (79 FR 51658)). Tadpoles are grazers, having rough tooth rows for scraping plant surfaces and ingesting plant tissue and bacteria, algae, detritus, and probably carrion (Licht 1974, p. 624; McAllister and Leonard 1997, p. 13). Competitors for food resources include nonnative fish species, bullfrogs, and green frogs.

Pearl and Hayes (2004, pp. 8–9) posit that Oregon spotted frogs are limited by both latitude and elevation to areas that provide warm-water marsh conditions (summer shallow water exceeding 68 degrees Fahrenheit (F) (20 degrees Celsius (C)) based on the observed temperatures and slow developmental rates in egg stages (compared to other pond-breeding ranid frogs) and increased surface activity in adult frogs as water temperatures exceed 68 degrees F (20 degrees C) and when the differentiation between surface and subsurface is greater than 37 degrees F (3 degrees C) (Watson *et al.* 2003, p. 299). Warmer water is important for embryonic development and plant food production for larval rearing (Watson *et al.* 2003, p. 299) and to allow subadults and adults to bask.

Therefore, based on the information above, we identify the following physical or biological features needed by Oregon spotted frogs to provide for their nutritional and physiological requirements: (1) Sufficient quality of water to support habitat used by Oregon spotted frogs (including providing for a sufficient prey base); (2) absence of competition from introduced fish and bullfrogs; and (3) shallow (warmer) water.

Cover or Shelter

During the dry season, Oregon spotted frogs move to deeper, permanent pools or creeks and show a preference for areas with greater than 50 percent surface water and/or less than 50 percent vegetation closure (Watson *et al.* 2003, pp. 295, 297), avoiding dense stands of grasses with greater than 75 percent closure. They are often observed near the water surface basking and feeding in beds of floating and shallow subsurface vegetation (Watson *et al.* 2003, pp. 291–298; Pearl *et al.* 2005a, pp. 36–37) that appears to allow them to effectively use ambush behaviors in habitats with high prey availability. The off-shore vegetation mats also offer basking habitat that is less accessible to some terrestrial predators (Pearl *et al.* 2005a, p. 37). Proximity to escape cover such as aggregated organic substrates also may be particularly important for Oregon spotted frogs to successfully evade avian, terrestrial, and amphibian predators (Licht 1986b, p. 241; Hallock and Pearson 2001, pp. 14–15; Pearl & Hayes 2004, p. 26).

Oregon spotted frogs, which are palatable to fish and bullfrogs (see Factor C. Disease or Predation in our final listing rule published in the **Federal Register** on August 29, 2014 (79 FR 51658)), did not evolve with introduced species and, in some areas, such as high-elevation lakes, did not evolve with native fish. Therefore, Oregon spotted frogs may not have the mechanisms to avoid the fish that prey on the tadpoles. The warm-water microhabitat requirement of the Oregon spotted frog, unique among native ranids of the Pacific Northwest, exposes it to a number of introduced fish species (Hayes 1994, p. 25), the most common being brook trout (*Salvelinus fontinalis*). During drought years, as dropping water levels reduce wetland refuges, Oregon spotted frog larvae become concentrated and are exposed to brook trout predation (Hayes *et al.* 1997, p. 5; Hayes 1998a, p. 15), resulting in lower Oregon spotted frog recruitment (Pearl 1999, p. 18). Demographic data suggest introduced fish have a negative effect on Oregon spotted frogs because sites with significant numbers of brook trout and/or fathead minnow have a disproportionate ratio of older spotted frogs to juvenile frogs (*i.e.,* poor recruitment) (Hayes 1997, pp. 42–43). Winter survival rates of Oregon spotted frog males and females are higher in overwintering locations where nonnative fish have limited or no access (Chelgren *et al.* 2008, p. 749), and the associated breeding areas have a significantly higher (0.89 times) number of egg masses (Pearl *et al.* 2009a, p. 142). Predation is believed to be more pronounced in spatially constrained overwintering habitats where frogs and fish both seek flowing water with dissolved oxygen; however, these negative effects can be mediated by habitat complexity and the seasonal use of microhabitats, and Oregon spotted frogs can benefit from fish-free overwintering sites, even if fish are present in other local habitats (Pearl *et al.* 2009a, p. 143). In addition, nonnative fish (in particular wide-gape fish like bluegill sunfish) may be facilitating the distribution and abundance of bullfrogs by preying upon macroinvertebrates that would otherwise consume bullfrog tadpoles (Adams *et al.* 2003, p. 349).

Bullfrogs share similar habitat and temperature requirements with the Oregon spotted frog, but adult bullfrogs achieve larger body size than native western ranids and even juvenile bullfrogs can consume post-metamorphic native frogs (Hayes and Jennings 1986, p. 492; Pearl *et al.* 2004,

p. 16). In addition, bullfrog larvae can outcompete or displace native larvae from their habitat or optimal conditions by harassing native larvae at feeding stations or inhibiting native larvae feeding patterns (Kupferberg 1997, pp. 1741–1746, Kiesecker and Blaustein 1998, pp. 783–784, Kiesecker *et al.* 2001b, pp. 1966–1967). Therefore, Oregon spotted frogs require areas that are sheltered from competition with, or predation by, bullfrogs.

Within the current range of the Oregon spotted frog are two different winter regimes. In British Columbia and Washington, the Puget Trough climate is maritime with mild summer and winter temperatures. Subfreezing conditions occur only for short periods in November through March, but ice rarely persists for more than a week. The Cascades winter conditions are cold enough to produce ice-capped water bodies from December to February, and temperatures regularly extend below freezing between mid-October and early April. Known overwintering sites are associated with flowing systems, such as springs and creeks, that provide well-oxygenated water (Hallock and Pearson 2001, p. 15; Hayes *et al.* 2001, pp. 20–23; Tattersall and Ultsch 2008, pp. 123, 129, 136) and sheltering locations protected from predators and freezing conditions (Risenhoover *et al.* 2001b, pp. 13–26; Watson *et al.* 2003, p. 295; Pearl and Hayes 2004, pp. 32–33). Oregon spotted frogs may burrow in mud, silty substrate, or clumps of emergent vegetation during periods of prolonged or severe cold (Watson *et al.* 2003, p. 295; McAllister and Leonard 1997, p. 17) but may remain active throughout most of the winter (Hallock and Pearson 2001, p. 17). Therefore, overwintering habitat needs to retain water during the winter (October through March or early April), and, to facilitate movement, these areas need to be hydrologically connected via surface water breeding and rearing habitat.

In the areas of the range where water bodies become capped by ice and snow for several weeks during the winter, hypoxic water conditions can occur due to cessation of photosynthesis combined with oxygen consumption by decomposers (Wetzel 1983, pp. 162–170). While lethal oxygen levels for Oregon spotted frogs have not been evaluated, other ranid species have been found to use overwintering microhabitat with well-oxygenated waters (Ultsch *et al.* 2000, p. 315; Lamoureux and Madison 1999, p. 434), and most fish cannot tolerate levels below 2.0 mg/L (Wetzel 1983, p. 170). However, some evidence indicates that Oregon spotted frogs can tolerate levels at, or somewhat below, 2.0 mg/L and do not purposefully avoid areas with low oxygen levels, at least for short periods (Hayes *et al.* 2001, pp. 20–22; Risenhoover *et al.* 2001b, pp. 17–18).

Therefore, based on the information above, we identify the following physical or biological features needed by Oregon spotted frogs to provide for their cover and shelter requirements: (1) Permanent fresh water bodies, including natural and manmade, that have greater than 50 percent surface water with floating and shallow subsurface vegetation during the summer, and that are hydrologically connected via surface water to breeding and rearing habitat; (2) permanent fresh water bodies, including natural and manmade, that hold water from October to March and are hydrologically connected via surface water to breeding and rearing habitat; (3) physical cover from avian and terrestrial predators, and lack of predation by introduced fish and bullfrogs; and (4) refuge from lethal overwintering conditions (freezing and anoxia).

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Oregon spotted frog breeding sites are generally temporarily inundated (flooded or underwater) shallows (≤12 in (30 cm) deep) that are hydrologically connected to permanent waters (Licht 1971, p. 120, Hayes *et al.* 2000 entire, Pearl and Bury 2000, pp. 6–7, Risenhoover *et al.* 2001a, pp. 13–15, Watson *et al.* 2003, p. 297) and include pools, gradually receding shorelines, benches of seasonal lakes and marshes, and wet meadows. Egg-laying microhabitats are gradually sloped and relatively close to shorelines (Hayes *et al.* 2000, p. 5; Pearl and Bury 2000, p. 6; Pearl and Hayes 2004, p. 20) and are usually associated with submergent or the previous year's emergent vegetation. Characteristic vegetation includes grasses, sedges, and rushes. Vegetation coverage beneath egg masses is generally high, and Oregon spotted frog egg masses are rarely found over open soil or rock substrates (Pearl and Bury 2000, p. 6; Lewis *et al.* 2001, pp. 9–10). Full solar exposure seems to be a significant factor in breeding habitat selection and eggs are laid where the vegetation is low or sparse, such that vegetation structure does not shade the eggs (McAllister and Leonard 1997, pp. 8, 17; McAllister and White 2001, pp. 10–11; Pearl and Bury 2000, p. 6; Pearl *et al.* 2009a, pp. 141–142).

To be considered essential breeding habitat, water must be permanent enough to support breeding, tadpole development to metamorphosis (approximately 4 months), and survival of frogs. Egg-laying can begin as early as February in British Columbia and Washington, and as late as early June in the higher elevations (Leonard *et al.* 1993, p. 132). In addition, breeding habitat must be hydrologically connected to permanent waters. The heaviest losses to predation are thought to occur shortly after tadpoles emerge from eggs, when they are relatively exposed and poor swimmers (Licht 1974, p. 624). Significant mortality can also result when tadpoles become isolated in breeding pools away from more permanent waters (Licht 1974, p. 619; Watson *et al.* 2003, p. 298). Watson *et al.* (2000, p. 28) reported nearly total reproductive failure in 1998 when the egg-laying pools dried due to dry weather following breeding. In addition to being vulnerable to desiccation, tadpoles may succumb to low dissolved oxygen levels in isolated pools and ponds during summer (Watson *et al.* 2000, p. 28).

Therefore, based on the information above, we identify the following physical or biological features needed by Oregon spotted frogs to provide for sites for reproduction, or rearing (development) of offspring: (1) Standing bodies of fresh water, including natural and manmade ponds, slow-moving streams or pools within streams, and other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a minimum of 4 months (from egg-laying through metamorphosis); (2) shallow (less than or equal to 12 in (30 cm)) water areas (shallow water may also occur over vegetation that is in deeper water); (3) a hydrological connection to a permanent water body; (4) gradual topographic gradient; (5) emergent wetland vegetation (or vegetation that can mimic emergent vegetation via manipulation, for example reed canarygrass that can be mowed); and (6) full solar exposure.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

Dispersal habitat may consist of ephemeral (water present for only a short time), intermittent, or perennial drainages that are generally not suitable for breeding but can provide corridors that afford movement. This habitat also offers areas for the establishment of home ranges by juvenile recruits, maintenance of gene flow through the movement of juveniles and adults between populations, and recruitment into new breeding habitat or recolonization of breeding habitat after local extirpations. Detailed studies of dispersal and population dynamics of Oregon spotted frogs are limited. However, home ranges in a Washington study averaged 5.4 ac (2.2 ha), and daily movement was 16–23 feet (5–7 meters) throughout the year (Watson *et al.* 2003, p. 295). Oregon spotted frogs at the Sunriver site in Oregon routinely make annual migrations of 0.31–0.81 mi (0.5–1.3 km) between the major egg-laying complex and an overwintering site (Bowerman 2006, pers. comm.). Longer travel distances, while infrequent, have been observed between years and within a single year between seasons. The maximum observed movement distance in Washington was 1.5 mi (2.4 km) between seasons along lower Dempsey Creek to the creek's mouth from the point where the frogs were marked (McAllister and Walker 2003, p. 6). In Oregon, the maximum observed movement was 1.74 mi (2.8 km) downstream (Cushman and Pearl 2007, p. 13). While these movement studies are specific to Oregon spotted frogs, the number of studies and size of the study areas are limited and studies have not been conducted over multiple seasons or years. In addition, the ability to detect frogs is challenging because of the difficult terrain in light of the need for the receiver and transmitter to be in close proximity. Hammerson (2005) recommends that a 3.1-mi (5-km) separation distance for suitable habitat be applied to all ranid frog species because the movement data for ranids are consistent. Furthermore, despite occasional movements that are longer or that may allow some genetic interchange between distant populations (for example, the 10-km (6.2-mi) distance noted by Blouin *et al.* (2010, pp. 2186, 2188), the preponderance of data indicates that a separation distance of several kilometers may be appropriate and practical for delineation of occupancy. Therefore, for the purposes of evaluating the connectedness of Oregon spotted frog breeding areas and individual frogs' ability to move between areas of suitable habitat, we will assume a maximum movement distance of 3.1 mi (5 km). However, this distance does not account for high-water events that can transport frogs and tadpoles downstream. In addition, these aquatic movement corridors should be free of impediments to upstream movement, including but not limited to hard barriers such as dams, impassable culverts, lack of water, and biological barriers such as lakes or rivers/creeks without refugia from predators.

Maintenance of populations across a diversity of ecological landscapes is necessary to provide sufficient protection against changing environmental circumstances (such as climate change). This diversity of habitat areas provides functional redundancy to safeguard against stochastic events (such as droughts) and may also be necessary as different regions or microclimates respond to changing climate conditions. Establishing or maintaining populations across a broad geographic area spreads out the risk to individual populations across the range of the species, thereby conferring species resilience. Finally, protecting a wide range of habitats across the occupied range of the species simultaneously maintains genetic diversity of the species, which protects the underlying integrity of the major genetic groups (Blouin *et al.* 2010, pp. 2184–2185) whose persistence is important to the ecological fitness of the species as a whole (Blouin *et al.* 2010, p. 2190).

Therefore, based on the information above, we identify the following physical or biological features needed by Oregon spotted frogs to provide habitats protected from disturbance and representative of the historical, geographic, and ecological distribution: (1) Wetted corridors within 3.1 mi (5 km) of breeding habitat that are free of barriers to movement, and (2) a diversity of high-quality habitats across multiple sub-basins throughout the geographic extent of the species' range sufficiently representing the major genetic groups.

Primary Constituent Elements for Oregon Spotted Frog

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Oregon spotted frog in areas occupied at the time of listing, focusing on the features' PCEs. PCEs are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs specific to the Oregon spotted frog are:

(1) PCE 1—Nonbreeding (N), Breeding (B), Rearing (R), and Overwintering Habitat (O). Ephemeral or permanent bodies of fresh water, including but not limited to natural or manmade ponds, springs, lakes, slow-moving streams, or pools within or oxbows adjacent to streams, canals, and ditches, that have one or more of the following characteristics:

- Inundated for a minimum of 4 months per year (B, R) (timing varies by elevation but may begin as early as February and last as long as September);
- Inundated from October through March (O);
- If ephemeral, areas are hydrologically connected by surface water flow to a permanent water body (*e.g.*, pools, springs, ponds, lakes, streams, canals, or ditches) (B, R);
- Shallow-water areas (less than or equal to 30 centimeters (12 inches), or water of this depth over vegetation in deeper water (B, R);
- Total surface area with less than 50 percent vegetative cover (N);
- Gradual topographic gradient (less than 3 percent slope) from shallow water toward deeper, permanent water (B, R);
- Herbaceous wetland vegetation (*i.e.*, emergent, submergent, and floating-leaved aquatic plants), or vegetation that can structurally mimic emergent wetland vegetation through manipulation (B, R);
- Shallow-water areas with high solar exposure or low (short) canopy cover (B, R);
- An absence or low density of nonnative predators (B, R, N)

(2) PCE 2—Aquatic movement corridors. Ephemeral or permanent bodies of fresh water that have one or more of the following characteristics:

- Less than or equal to 3.1 mi (5 km) linear distance from breeding areas;
- Impediment free (including, but not limited to, hard barriers such as dams, impassable culverts, lack of water, or biological barriers such as abundant predators, or lack of refugia from predators).

(3) PCE 3—Refugia habitat. Nonbreeding, breeding, rearing, or overwintering habitat or aquatic movement corridors with habitat characteristics (*e.g.*, dense vegetation and/or an abundance of woody debris) that provide refugia from predators (*e.g.*, nonnative fish or bullfrogs).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. Here we describe the type of special management considerations or protection that may be required for the physical or biological features identified as essential for the

Oregon spotted frog. The specific critical habitat units and subunits where these management considerations or protection apply for each species are identified in Unit Descriptions.

A detailed discussion of activities influencing the Oregon spotted frog and their habitat can be found in the final listing rule (79 FR 51658). Threats to the physical or biological features that are essential to the conservation of this species and that may warrant special management considerations or protection include, but are not limited to: (1) Habitat modifications brought on by nonnative plant invasions or native vegetation encroachment (trees and shrubs); (2) loss of habitat from conversion to other uses; (3) hydrologic manipulation; (4) removal of beavers and features created by beavers; (5) livestock grazing; and (6) predation by invasive fish and bullfrogs. These threats also have the potential to affect the PCEs if conducted within or adjacent to designated units.

The physical or biological features essential to the conservation of the Oregon spotted frog may require special management considerations or protection to ensure the provision of wetland conditions and landscape context of sufficient quantity and quality for long-term conservation and recovery of the species. Management activities that could ameliorate the threats described above include (but are not limited to): Treatment or removal of exotic and encroaching vegetation (for example mowing, burning, grazing, herbicide treatment, shrub/tree removal); modifications to fish stocking and beaver removal practices in specific water bodies; nonnative predator control; stabilization of extreme water level fluctuations; restoration of habitat features; and implementation of appropriate livestock grazing practices.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If, after identifying currently occupied areas, we determine that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e) we then consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species.

We equate the geographical area occupied at the time of listing with the current range for the species; see the final listing rule (79 FR 51658, August 29, 2014; Current Range/Distribution and Table 1) for a description of the current range of the Oregon spotted frog, which is identified at the scale of sub-basin/5th field watershed. We used information from reports and databases prepared by Federal and State agencies and private researchers to identify the specific locations used by Oregon spotted frogs for egg-laying, rearing, nonbreeding, and overwintering. Occurrence data used for determining occupancy includes the time period between 2000 and 2013; older occurrence data were not considered to be a reliable predictor for current occupancy. In only one location (Davis Lake in the Upper Deschutes River) throughout the species' range is occurrence data used prior to 2005 (*i.e.,* 2000–2004). Therefore, the majority of occupied occurrence data was collected in 2005 or later.

To determine whether the specific areas within the occupied sub-basins/watersheds contain the PCEs, we plotted all occurrence records in ArcGIS, version 9 or 10 (Environmental Systems Research Institute, Inc.), a computer geographic information system program, and overlaid them on NAIP digital imagery, NWI data, National Hydrologic Data (NHD), and slope data. Where NWI data were available and appeared to well-represent the potential habitat as seen on the NAIP imagery, the NWI data were used to approximate PCEs. These areas are referred to as "wetlands" in the unit descriptions. However, in many cases the NWI features were either too expansive or not expansive enough to capture the known occurrences and areas of use; in these cases, NAIP imagery, slope, and local knowledge were utilized to approximate the areas that are most likely to contain the PCEs. These areas are referred to as "seasonally wetted" in the unit descriptions. In order to capture PCE 2-aquatic movement corridors, we used the NHD to map 3.1 mi (5 km) distance up and downstream from the occurrence data. NAIP imagery and local knowledge were used to refine NHD line features (for example, adjusting alignment with actual water course).

In Washington, within five of the sub-basins/watersheds, NWI and NAIP imagery were not sufficient to map the seasonally flooded areas adjacent to rivers/streams. In these areas, we relied on the NHD line features (adjusting where needed to reflect the actual water course) to delineate river miles. The lateral extent of critical habitat in these segments is defined as the stream and the associated hydrologic floodplain. The hydrologic floodplain is the relatively flat, depositional surface adjacent to the channel, formed by the river under its present climate and sediment load, and overflowed during moderate peak flow events. The hydrologic floodplain can be distinguished from the abutting upland by the presence of soils derived from alluvial sediments, wetland soils, and riparian/wetland vegetation.

Within the geographical area occupied at the time of listing we identified specific areas that are known to be occupied by the Oregon spotted frog on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. Additionally, in the proposed rule (78 FR 53538, August 29, 2013) we proposed to designate areas that are currently "not known to be occupied." Although we acknowledged in the proposed rule our uncertainty about the occupancy status of these areas based on a lack of specific survey data, we determined that these areas are occupied under the definition of critical habitat based on the following factors: These areas (1) are within occupied sub-basins, (2) contain habitat features similar to known occupied areas, (3) hydrologically connect (via surface waters) to occupied areas, and (4) do not contain barriers that would inhibit Oregon spotted frog movement between occupied areas.

We recognize that the physical or biological features may only be present seasonally in some areas because aquatic systems are not static; water levels fluctuate between seasons, severe flood events occur, and beavers abandon and recolonize sites. As a result of these changing habitat conditions, some areas may not have continuous Oregon spotted frog presence. Therefore, we also applied the standard for unoccupied areas and evaluated whether all areas are essential for the conservation of the species. In evaluating this, we considered: (1) The importance of the area to the future recovery of the species; (2) whether the areas have or are capable of providing the essential physical or biological features; and (3) whether the areas provide connectivity between upstream and downstream populations, thus facilitating gene flow and allowing for recolonization of sites that may become lost due to threats or other factors, such as natural catastrophic or stochastic events that render existing occupied areas nonfunctional. We determined that all of the areas included in critical habitat also meet these three factors; therefore, we consider all lands and waters included in the designation to be essential for the conservation of the species.

Areas designated as critical habitat for the Oregon spotted frog are not representative of the entire known historical geographic distribution of the species. We are not designating critical habitat in areas where the species may be extirpated, such as in California or the Willamette Valley in Oregon. These historical areas do not meet the criteria for critical habitat since they are not essential to the conservation of the species.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the Oregon spotted frog. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0088, on our Internet site *http://www.fws.gov/wafwo/osf.html,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

In summary, we are designating 14 units of critical habitat that we determined were occupied at the time of listing and contain sufficient elements of physical or biological features being present to support Oregon spotted frog life-history processes. The physical or biological features relate to Oregon spotted frog nonbreeding, breeding, rearing, and overwintering habitat needs, the specifics of which are discussed in greater detail above, see *Primary Constituent Elements* for Oregon spotted frog. In addition, where occupancy or the presence of the physical or biological features may be uncertain, seasonal, or sporadic, we also consider those areas to be essential for the conservation of the species. These units are delineated by the sub-basins/watersheds where Oregon spotted frogs remain extant, based on occurrence data as described above. Within each unit, the physical or biological features necessary to support life-history processes require special management (see *Special Management Considerations or Protections* above). The threats are relatively consistent across each unit, with the exception of one unit where threats are significantly different (Unit 8 Upper Deschutes River). This unit is further subdivided into two subunits.

Final Critical Habitat Designation

We are designating 14 units as critical habitat for the Oregon spotted frog. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those 14 units are: (1) Lower Chilliwack River; (2) South Fork Nooksack River; (3) Samish River; (4) Black River; (5) White Salmon River; (6) Middle Klickitat River; (7) Lower Deschutes River; (8) Upper Deschutes River; (9) Little Deschutes River; (10) McKenzie River; (11) Middle Fork Willamette River; (12) Williamson River; (13) Upper Klamath Lake; and (14) Upper Klamath. Table 1 shows the critical habitat units.

TABLE 1—APPROXIMATE AREA AND LANDOWNERSHIP IN DESIGNATED CRITICAL HABITAT UNITS FOR THE OREGON SPOTTED FROG

Critical habitat unit	Federal Ac (Ha)	State Ac (Ha)	County Ac (Ha)	Private/local municipalities Ac (Ha)	Total
Washington					
1. Lower Chilliwack River	0	0	0	143 (58)	143 (58)
2. South Fork Nooksack River	0	0	0	111 (45)	111 (45)
3. Samish River	0	1 (<1)	7 (3)	976 (395)	984 (398)
4. Black River	877 (355)	375 (152)	485 (196)	3,143 (1,272)	4,880 (1,975)
5. White Salmon River	108 (44)	1,084 (439)	0	33 (13)	1,225 (496)
6. Middle Klickitat River	4,069 (1,647)	0	0	151 (61)	4,220 (1,708)
Oregon					
7. Lower Deschutes River	90 (36)	0	0	0	90 (36)
8. Upper Deschutes River	23,213 (9,395)	185 (75)	45 (18)	589 (238)	24,032 (9,726)
8A. Upper Deschutes River, Below Wickiup Dam	*1,182 (479)*	*185 (75)*	*45 (18)*	*589 (238)*	*2,001 (810)*
8B. Upper Deschutes River, Above Wickiup Dam	*22,031 (8,916)*	*0*	*0*	*0 (<1)*	*22,031 (8,916)*
9. Little Deschutes River	5,288 (2,140)	14 (6)	80 (32)	5,651 (2,287)	11,033 (4,465)
10. McKenzie River	98 (40)	0	0	0	98 (40)
11. Middle Fork Willamette River	292 (118)	0	0	0	292 (118)
12. Williamson River	10,418 (4,216)	0	0	4,913 (1,988)	15,331 (6,204)
13. Upper Klamath Lake	1,259 (510)	9 (4)	1 (<1)	1,068 (432)	2,337 (946)
14. Upper Klamath	103 (42)	0	0	159 (64)	262 (106)
Total	45,815 (18,541)	1,668 (675)	618 (250)	16,937 (6,854)	65,038 (26,320)

Note: Area sizes may not sum due to rounding. Area estimates reflect all land and stream miles within critical habitat unit boundaries, except those stream miles included in Table 2.

TABLE 2—APPROXIMATE RIVER MILEAGE AND OWNERSHIP WITHIN PROPOSED CRITICAL HABITAT UNITS FOR THE OREGON SPOTTED FROG

Critical habitat unit	Federal river mile (km)	Federal/ private * river mile (km)	State river mile (km)	State/private river mile (km)	County river mile (km)	County/ private river mile (km)	Private/local municipalities river mile (km)	Total
1. Lower Chilliwack River	0	0	0	0	0	0	4.38 (7.05)	4.38 (7.05)
2. South Fork Nooksack River	0	0	0	0	0	0	3.56 (5.73)	3.56 (5.73)
3. Samish River	0	0	0	0	0	0	1.73 (2.78)	1.73 (2.78)
4. Black River	0.06 (0.10)	0.06 (0.10)	0.49 (0.79)	0.05 (0.07)	0.64 (1.02)	0.26 (0.42)	5.90 (9.49)	7.46 (11.98)
5. White Salmon River	0.91 (1.46)	0	0	0	0	0	2.30 (3.70)	3.21 (5.16)
Total	0.97 (1.56)	0.06 (0.09)	0.49 (0.79)	0.05 (0.07)	0.64 (1.02)	0.26 (0.42)	17.87 (28.75)	20.34 (32.7)

* Ownership—multi-ownership (such as Federal/Private) indicate different ownership on each side of the river/stream/creek.

Note: River miles (km) may not sum due to rounding. Mileage estimates reflect stream miles within critical habitat unit boundaries that are not included in area estimates in Table 1.

We present brief descriptions of all critical habitat units and subunits and reasons why they meet the definition of critical habitat for the Oregon spotted frog, below. All critical habitat units are occupied by the species at the time of listing (see the final listing rule published August 29, 2014 (79 FR 51658)). All of the critical habitat units contain the physical or biological features essential to the conservation of the species, which may require special management considerations or protection. All units are subject to some or all of the following threats: Habitat modifications brought on by nonnative plant invasions or native vegetation encroachment (trees and shrubs); loss or modification of habitat from conversion to other uses; hydrologic manipulation; removal of beavers and their structures; livestock grazing; and predation by invasive fish and bullfrogs. In all units, the physical or biological features essential to the conservation of the species may require special management considerations or protection to restore, protect, and maintain the essential features found there. Special management considerations or protection may be required to address the threats listed above.

All of the critical habitat units provide habitat needed by Oregon spotted frogs for year-round survival and contain the full extent of the distribution known at the time the species was listed. Each of the critical habitat units contributes to maintaining the geographic distribution (latitude, longitude, and elevation) of the species necessary to provide sufficient protection against changing environmental circumstances, thus providing resiliency and redundancy to safeguard against stochastic events, as well as providing representation of the genetic groups.

Critical Habitat Unit 1: Lower Chilliwack River

The Lower Chilliwack River unit consists of 143 ac (58 ha) and 4.4 river mi (7 river km) in Whatcom County, Washington. This unit includes the Sumas River and adjacent seasonally wetted areas from approximately the intersection with Hopewell Road downstream to the confluence with Swift Creek. This unit also includes portions of an unnamed tributary just south of Swift Creek, along with the adjacent seasonally wetted areas. Critical habitat in the river segments is defined as the stream and the associated hydrologic floodplain. Oregon spotted frogs are known to currently occupy this unit (Bohannon *et al.* 2012). The entire area within this unit is under private ownership. All of the essential physical or biological features are found within the unit, but are impacted by invasive plants (reed canarygrass), woody vegetation plantings, and hydrologic modification of river flows. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Critical Habitat Unit 2: South Fork Nooksack River

The South Fork Nooksack River unit consists of 111 ac (45 ha) and 3.5 river mi (5.7 river km) in Whatcom County, Washington. This unit includes the Black Slough and adjacent seasonally wetted areas from the headwaters to the confluence with South Fork Nooksack River. This unit also includes wetlands and seasonally wetted areas along Tinling Creek and the unnamed tributary to the Black Slough. Critical habitat in the river segments is defined as the stream and the associated hydrologic floodplain. Oregon spotted frogs are known to currently occupy this unit (Bohannon *et al.* 2012; Danilson *et al.* 2013). The entire area within this unit is under private ownership, including one nonprofit conservation organization. All of the essential physical or biological features are found within the unit, but are impacted by invasive plants (reed canarygrass), woody vegetation plantings and succession, and beaver removal efforts. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Critical Habitat Unit 3: Samish River

The Samish River unit consists of 984 ac (398 ha) and 1.7 river mi (2.8 river km) in Whatcom and Skagit Counties, Washington. This unit includes the Samish River and adjacent seasonally wetted areas from the headwaters downstream to the confluence with Dry Creek. Critical habitat in the river segments is defined as the stream and the associated hydrologic floodplain. Oregon spotted frogs are known to currently occupy this unit (Bohannon *et al.* 2012; Danilson *et al.* 2013). Within this unit, currently less than 1 ac (less than 1 ha) is managed by WDNR, 7 ac (3 ha) is managed by Skagit County, and 976 ac (395 ha) and 2 river mi (3 river km) are privately owned, including three nonprofit conservation organizations. All of the essential physical or biological features are found within the unit, but are impacted by invasive plants (reed canarygrass), woody vegetation plantings and succession, and beaver removal efforts. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Critical Habitat Unit 4: Black River

The Black River unit consists of 4,880 ac (1,975 ha) and 7.5 river mi (12 river km) in Thurston County, Washington. This unit includes the Black River and adjacent seasonally wetted areas from Black Lake downstream to approximately 3 mi (5 km) south of the confluence with Mima Creek. This unit also includes six tributaries to the Black River (Dempsey Creek, Salmon Creek, Blooms Ditch, Allen Creek, Beaver Creek, and Mima Creek), one tributary to Black Lake (Fish Pond Creek), and their adjacent seasonally wetted areas. Critical habitat in the river segments is defined as the stream and the associated hydrologic floodplain. Oregon spotted frogs are known to currently occupy this unit (Hallock 2013; WDFW and USFWS multiple data sources). Within this unit, currently 877 ac (355 ha) are federally managed by the Nisqually NWR (873 ac (353 ha)) and the Department of Energy (4 ac (2 ha)); 375 ac (152 ha) are managed by State agencies, including the Washington Department of Fish and Wildlife and Department of Natural Resources; 485 ac (196 ha) are County managed; and 3,143 ac (1,272 ha) are privately owned, including three nonprofit conservation organizations. Within this unit, currently 5.9 river mi (9.49 river km) are privately owned; less than 1 river mi (less than 1 river km) is dually managed/owned (*i.e.,* different owners on opposite sides of the river); and less than 1 river mi (less than 1 river km) each is managed by Nisqually NWR, State agencies, and Thurston County. All of the essential physical or biological features are found within the unit, but are impacted by invasive plants (reed canarygrass), woody vegetation plantings and succession, and beaver removal efforts. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Critical Habitat Unit 5: White Salmon River

The White Salmon River unit consists of 1,225 ac (496 ha) and 3.2 river mi (5.2 river km) in Skamania and Klickitat Counties, Washington. This unit includes the Trout Lake Creek from the confluence with Little Goose Creek downstream to the confluence with White Salmon River, Trout Lake, and the adjacent seasonally wetted areas. Critical habitat in the river segments is defined as the stream and the associated hydrologic floodplain. Oregon spotted frogs are known to currently occupy this unit (Hallock 2011 and Hallock 2012). Within this unit, currently 108 ac (44 ha) and 1 river mi (2 river km) are managed by the USFS Gifford-Pinchot National Forest, 1,084 ac (439 ha) are managed by WDNR as the Trout Lake NAP, and 33 ac (13 ha) and 2 river mi (4 river km) are privately owned. All of the essential physical or biological features are found within the unit, but are impacted by invasive plants and nonnative predaceous fish. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Critical Habitat Unit 6: Middle Klickitat River

The Middle Klickitat River unit consists of 4,220 ac (1,708 ha) in Klickitat County, Washington. This unit encompasses Conboy Lake, Camas Prairie, and all water bodies therein, and extends to the northeast along Outlet Creek to Mill Pond. The southwestern edge is approximately Laurel Road, the southern edge is approximately BZ Glenwood Highway, and the northern edge follows the edge of Camas Prairie to approximately Willard Spring. Oregon spotted frogs are known to currently occupy this unit (Hayes and Hicks 2011). Within this unit, currently 4,069 ac (1,647 ha) are managed by the Conboy Lake NWR, and 151 ac (61 ha) are privately owned. All of the essential physical or biological features are found within the unit, but are impacted by water management, exotic plant invasion, native tree encroachment, and nonnative predaceous fish and bullfrogs. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features. Within this unit, we are excluding lands managed under the Glenwood Valley Coordinated Resource Management Plan and Conservation Agreement. See *Exclusions Based on Other Relevant Impacts* for further details.

Critical Habitat Unit 7: Lower Deschutes River

The Lower Deschutes River unit consists of 90 ac (36 ha) in Wasco County, Oregon. This unit includes Camas Prairie and Camas Creek, a tributary to the White River, and occur entirely on the Mt. Hood National Forest. Oregon spotted frogs are known to currently occupy this unit (C. Corkran, pers. comm. October 2012). All of the essential physical or biological features are found within the unit but are impacted by vegetation succession (conifer encroachment). The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Critical Habitat Unit 8: Upper Deschutes River

The Upper Deschutes River unit includes 24,032 ac (9,726 ha) in Deschutes and Klamath Counties, Oregon, in the Upper Deschutes River sub-basin. The Upper Deschutes River unit extends from headwater streams and wetlands draining to Crane Prairie and Wickiup Reservoirs to the Deschutes River downstream to Bend, Oregon. This unit also includes Odell Creek and Davis Lake. Within this unit, currently 23,213 ac (9,394 ha) are managed by the USFS Deschutes National Forest, 185 ac (75 ha) are managed by Oregon Parks and Recreation Department, 45 ac (18 ha) are owned by the counties, and 589 ac (238 ha) are privately owned. A subset of the acreage managed by the Deschutes National Forest occurs within Wickiup and Crane Prairie reservoirs, which are operated by the Bureau of Reclamation. The Upper Deschutes River unit consists of two subunits: Below Wickiup Dam (Subunit 8A) and Above Wickiup Dam (Subunit 8B). Oregon spotted frogs are known to currently occupy this unit (USGS 2006 and 2012 datasets; Sunriver Nature Center; and USFS multiple data sources). The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features. Storage and release of water from the reservoir system influences the physical and biological features between the subunits. Within this unit, we are excluding lands managed under the Sunriver Great Meadow Management Plan, the Crosswater Environmental Plan, and the Old Mill Pond Oregon Spotted Frog Candidate Conservation Agreement with Assurances (CCAA). See *Exclusions Based on Other Relevant Impacts* for further details.

Subunit 8A: Below Wickiup Dam

This subunit includes 2,001 ac (810 ha). This subunit consists of the Deschutes River and associated wetlands downstream of Wickiup Dam to Bend, Oregon, beginning at the outlet of an unnamed tributary draining Dilman Meadow. Within this subunit, currently 1,182 ac (479 ha) are managed by the USFS Deschutes National Forest, 185 ac (75 ha) are managed by Oregon Parks and Recreation Department, 45 ac (18 ha) are managed by Deschutes County, and 589 ac (238 ha) are privately owned. All of the essential physical or biological features are found within the subunit but are impacted by hydrologic modification of river flows, reed canarygrass, nonnative predaceous fish, and bullfrogs. The essential features within occupied habitat within this subunit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Subunit 8B: Above Wickiup Dam

This subunit includes 22,031 ac (8,916 ha). This subunit includes the following lakes, including associated wetlands, in the upper watersheds that flow into the Crane Prairie/Wickiup Reservoir system: Hosmer Lake, Lava Lake, Little Lava Lake, Winopee Lake, Muskrat Lake, and Little Cultus Lake, Crane Prairie and Wickiup Reservoirs, and Davis Lake. The following riverine waterbodies and associated wetlands are critical habitat: Deschutes River from Lava Lake to Wickiup Reservoir, Cultus Creek downstream of Cultus Lake, Deer Creek downstream of Little Cultus Lake, and Odell Creek from an occupied unnamed tributary to the outlet in Davis Lake. The land within this subunit is primarily under USFS ownership. However, the Bureau of Reclamation manages the operation of Crane Prairie and Wickiup reservoirs. Within this subunit, currently 22,031 ac (8,916 ha) are managed by the USFS Deschutes National Forest and less than 1.0 ac (0.14 ha) is in private ownership. All of the essential physical or biological features are found within the subunit but are impacted by vegetation succession and nonnative predaceous fish. Physical and biological features found within the reservoirs in this unit are affected by the storage and release of water for irrigation. The essential features within this subunit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Critical Habitat Unit 9: Little Deschutes River

The Little Deschutes River unit consists of 11,033 ac (4,465 ha) in Klamath and Deschutes Counties, Oregon. The Little Deschutes River unit includes the extent of the Little Deschutes River and associated wetlands from the headwaters to the confluence with the Deschutes River, 1 mi (1.6 km) south of Sunriver and approximately 20 mi (32.2 km) south of Bend, Oregon. This unit includes the following tributaries, including adjacent wetlands: Big Marsh Creek, Crescent Creek, and Long Prairie Creek. Oregon spotted frogs are known to currently occupy this unit (USGS, Sunriver Nature Center, and USFS multiple data sources). Within this unit, currently 5,288 ac (2,140 ha) are managed by the USFS Deschutes National Forest and Prineville BLM, 14 ac (6 ha) are managed by the State of Oregon, 80 ac (32 ha) are managed by Deschutes and Klamath Counties, and 5,651 ac (2,287 ha) are privately owned. Additionally, the essential physical or biological features are found within the unit but are impacted by hydrologic manipulation of water levels for irrigation, nonnative predaceous fish, reed canarygrass, and bullfrogs. The essential features within occupied areas within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features. Within this unit, we are excluding lands managed under the Crosswater Environmental Plan. See *Exclusions Based on Other Relevant Impacts* for further details.

Critical Habitat Unit 10: McKenzie River Sub-Basin

The McKenzie River unit consists of 98 ac (40 ha) in Lane County, Oregon. This critical habitat unit occurs in the Mink Lake Basin, located in the headwaters of the main South Fork of the McKenzie River on the McKenzie River Ranger District of the USFS Willamette National Forest. The McKenzie River unit includes seven wilderness lakes, marshes, and ponds: Penn Lake, Corner Lake, Boat Lake, Cabin Meadows, two unnamed marshes, and a pond northeast of Penn Lake. A small segment of the South Fork McKenzie River between the two unnamed marshes also is included within this critical habitat unit. The entire area within this unit is under USFS ownership. Oregon spotted frogs are known to currently occupy this unit (Adams *et al.* 2011). All of the essential physical or biological features are found within the unit, but are impacted by nonnative predaceous fish, isolation, and vegetation encroachment. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Critical Habitat Unit 11: Middle Fork Willamette River

The Middle Fork Willamette River unit consists of 292 ac (118 ha) in Lane County, Oregon. This unit includes Gold Lake and bog, which are located in the 465-ac (188-ha) Gold Lake Bog Research Natural Area on the upstream end of Gold Lake on the USFS Willamette National Forest. The entire area within this unit is under USFS ownership. Oregon spotted frogs are known to currently occupy this unit (USFS data sources). All of the essential physical or biological features are found within the unit, but are impacted by nonnative predaceous fish, isolation, and vegetation encroachment. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Critical Habitat Unit 12: Williamson River

The Williamson River unit consists of 15,331 ac (6,204 ha) in Klamath County, Oregon. This unit includes the Williamson River and adjacent, seasonally wetted areas in Klamath Marsh NWR 4.89 mi (7.87 km) east of Silver Lake Highway, north to 0.998 mi (1.61 km) southeast of Big Springs, north through the Refuge to 0.24 mi (0.36 km) southeast of Three Creek spring, and upstream to 2.14 mi (3.44 km) north of the confluence with Aspen Creek. This unit also includes a portion of one tributary to the Williamson River (Jack Creek) and its adjacent seasonally wetted areas from National Forest Road 94, south of National Forest Road 88 through 1.32 mi (2.12 km) of O'Connor Meadow. Oregon spotted frogs are known to currently occupy this unit (USGS, USFS, and USFWS multiple data sources). Within this unit, 10,418 ac (4,216 ha) are federally managed by the Klamath Marsh NWR and the USFS Fremont-Winema National Forest, and 4,913 ac (1,988 ha) are privately owned. Additionally, the essential physical or biological features are found within the unit, but are impacted by invasive plants (reed canarygrass), woody vegetation succession, absence of beaver, and nonnative predators. The essential features within occupied areas within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Critical Habitat Unit 13: Upper Klamath Lake

The Upper Klamath Lake unit consists of 2,337 ac (946 ha) in Klamath County, Oregon. This unit includes the Wood River and its adjacent seasonally wetted areas from its headwaters downstream to the BLM south levee road just north of the confluence with Agency Lake as well as the complete length of the Wood River Canal (west of the Wood River) and its adjacent seasonally wetted areas starting 1.80 mi (2.90 km) south of Weed Road and continuing south. This unit also includes two tributaries to the Wood River (Fort Creek and Annie Creek) and their adjacent seasonally wetted areas: Fort Creek in its entirety from its headwaters to the junction of the Wood River and Annie Creek 0.75 mi (1.2 km) downstream from the Annie Creek Sno-Park to its junction with the Wood River. In addition, this unit includes three creeks (Sevenmile, Crane, and Fourmile) that flow into Sevenmile Canal and then into Agency Lake and their adjacent seasonally wetted areas.

Sevenmile Creek includes 1.40 mi (2.25 km) beginning north of Nicholson Road, south to the confluence of Crane Creek as well as the entire length of two connected tributaries (Blue Spring and Short Creek) and the associated, adjacent seasonally wetted areas. Crane Creek includes adjacent seasonally wetted areas 0.28 mi (0.44 km) from its headwaters south to the confluence with Sevenmile Creek as well as two tributaries (Mares Egg spring and a portion of an unnamed spring to the west of Crane Creek 0.16 mi (0.30 km) south of three unnamed springs near Sevenmile Road). Fourmile Creek includes the adjacent seasonally wetted areas associated with the historical Crane Creek channel, Threemile Creek, Cherry Creek, Jack springs, Fourmile springs, the confluence of Nannie Creek, and the north-south canals that connect Fourmile Creek to Crane Creek.

Oregon spotted frogs are known to currently occupy this unit (BLM, USFS, USGS, and USFWS multiple data sources). Within this unit, 1,259 ac (510 ha) are managed by the BLM, USFS Fremont-Winema National Forest, and Bureau of Reclamation; 9 ac (4 ha) are managed by Oregon State Parks; less than 1 ac (<1 ha) are owned by Klamath County; and 1,068 ac (432 ha) are privately owned. All of the essential physical or biological features are found within the unit, but are impacted by invasive plants (reed canarygrass), woody vegetation plantings and succession, hydrological changes, and nonnative predators. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Critical Habitat Unit 14: Upper Klamath

The Upper Klamath unit consists of 262 ac (106 ha) of lakes and creeks in Klamath and Jackson Counties, Oregon. In Klamath County, Buck Lake critical habitat includes seasonally wetted areas adjacent to the western edge of Buck Lake encompassing Spencer Creek downstream due west of Forest Service Road 46, three unnamed springs, and Tunnel Creek. Parsnip Lakes, in Jackson County, includes seasonally wetted areas associated with Keene Creek from the Keene Creek dam to 0.55 mi (0.88 km) east from the confluence of Mill Creek as well as four lakes associated with the creek. Oregon spotted frogs are known to currently occupy this unit (BLM, USFS, USGS, and USFWS multiple data sources). Within this unit, 103 ac (42 ha) are managed by the BLM and USFS Fremont-Winema National Forest, and 159 ac (64 ha) are privately owned. All of the essential physical or biological features are found within the unit, but are impacted by woody vegetation succession, nonnative predators, lack of beaver, and hydrological changes. The essential features within this unit may require special management considerations or protection to ensure maintenance or improvement of the existing nonbreeding, breeding, rearing, and overwintering habitat, aquatic movement corridors, or refugia habitat, as well as to address any changes that could affect these features.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a new definition of destruction or adverse modification on February 11, 2016 (81 FR 7214), which became effective on March 14, 2016. Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the Oregon spotted frog. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of these species or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Oregon spotted frog. These activities include, but are not limited to:

(1) Actions that would significantly alter the structure and function of the wetland, pond, channel, lake, oxbow, spring, or seasonally flooded areas morphology, geometry, or water availability/permanence. Such actions or activities could include, but are not limited to:

a. Filling or excavation; channelization; impoundment;

b. road and bridge construction; urban, agricultural, or recreational development;

c. mining;

d. groundwater pumping;

e. dredging;

f. construction or destruction of dams or impoundments;

g. water diversion;

h. water withdrawal;

i. hydropower generation;

j. livestock grazing;

k. beaver removal;

l. destruction of riparian or wetland vegetation;

m. pond construction;

n. river restoration, including channel reconstruction, placement of large woody debris, vegetation planting, reconnecting riverine floodplain, or gravel placement; and

o. reservoir water storage and release.

These activities may lead to changes in the hydrologic function of the aquatic habitat and alter the timing, duration, water flows, and water depth. These changes may be designed to benefit the Oregon spotted frog and actually increase habitat in the long term, or may degrade or eliminate Oregon spotted frog habitat and could lead to the reduction in available breeding, rearing, nonbreeding, and overwintering habitat necessary for the frog to complete its life cycle. If the permanence of an aquatic system declines so that it regularly dries up, it may lose its ability to support Oregon spotted frogs. If the quantity of water declines, it may reduce the likelihood that the site will support a population of frogs that is robust enough to be viable over time. Similarly, ephemeral, intermittent, or perennial ponds can be important stop-over points for frogs moving among breeding areas or between breeding, rearing, dry season, or wintering areas. Reducing the permanence of these sites may reduce their ability to facilitate frog movements. However, in some cases, increasing permanence can be detrimental as well, if it creates favorable habitat for predatory fish or bullfrogs that otherwise could not exist in the system. Reservoir operations such as the storage and release of water could be timed to support breeding, rearing, and overwintering habitat within occupied reservoirs and downstream of dams.

(2) Actions that would significantly alter the vegetation structure in and around habitat. Such actions or activities could include, but are not limited to, removing, cutting, burning, or planting vegetation for restoration actions, creation or maintenance of urban or recreational developments, agricultural activities, and grazing. The alteration of the vegetation structure may change the habitat characteristics by changing the microhabitat (*e.g.,* change in temperature, water depth, basking opportunities, and cover) and thereby negatively affect whether the Oregon spotted frog is able to complete all normal behaviors and necessary life

functions or may allow invasion of competitors or predators.

(3) Actions that would significantly degrade water quality (for example, alter water chemistry or temperature). Such actions or activities could include, but are not limited to, release of chemicals or biological pollutants into surface water or into connected ground water at a point source or by dispersed release (nonpoint source); livestock grazing that results in sedimentation, urine, or feces in surface water; runoff from agricultural fields; and application of pesticides (including aerial overspray). These actions could adversely affect the ability of the habitat to support survival and reproduction of Oregon spotted frogs. Variances in water chemistry or temperature could also affect the frog's ability to survive with chytrid fungus (*Batrachochytrium dendrobatidis*), oomycete water mold *Saprolegnia*, or the trematode *Ribeiroia ondatrae*.

(4) Actions that would directly or indirectly result in introduction of nonnative predators, increase the abundance of extant predators, or introduce disease. Such actions could include, but are not limited to: Introduction or stocking of fish or bullfrogs; water diversions, canals, or other water conveyance that moves water from one place to another and through which inadvertent transport of predators into Oregon spotted frog habitat may occur; and movement of water, mud, wet equipment, or vehicles from one aquatic site to another, through which inadvertent transport of eggs, tadpoles, or pathogens may occur. These actions could adversely affect the ability of the habitat to support survival and reproduction of Oregon spotted frogs. Additionally, the stocking of introduced fishes could prevent or preclude recolonization of otherwise available breeding or overwintering habitats, which are necessary for the conservation of Oregon spotted frogs.

(5) Actions and structures that would physically block aquatic movement corridors. Such actions and structures include, but are not limited to: Urban, industrial, or agricultural development; water diversions (such as dams, canals, pipes); water bodies stocked with predatory fishes or bullfrogs; roads that do not include culverts; or other structures that physically block movement. These actions and structures could reduce or eliminate immigration and emigration within a sub-basin.

(6) Inclusion of lands in conservation agreements or easements that result in any of the actions discussed above. Such easements could include, but are not limited to, Natural Resources Conservation Service Wetland Reserve Program, USDA Farm Service Agency's Conservation Reserve and Conservation Reserve Enhancement Programs, HCPs, Safe Harbor Agreements, or CCAAs.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: "The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." There are no Department of Defense lands within the critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the Oregon spotted frog, the benefits of critical habitat include promotion of public awareness of the presence of the Oregon spotted frog and the importance of habitat protection, and in cases where a Federal nexus exists, potentially greater habitat protection for the Oregon spotted frog due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding the areas listed below (table 3) from critical habitat designation for the Oregon spotted frog based on the following final plans/agreements: Glenwood Valley Coordinated Resource Management Plan and Conservation Agreement, Crosswater Environmental Plan, Sunriver Management Plans, and Old Mill District Candidate Conservation Agreement with Assurances.

TABLE 3—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION BY CRITICAL HABITAT UNIT

Unit or subunit as proposed	Specific area	Areas excluded from critical habitat, in acres (hectares)
6—Middle Klickitat River	Glenwood Valley Coordinated Resource Management Plan and Conservation Agreement.	2,627 (1,063)
8A—Upper Deschutes River Below Wickiup Dam	Crosswater Environmental Plan	86 (35)
9—Little Deschutes River		121 (49)
8A—Upper Deschutes River Below Wickiup Dam	Sunriver Management Plans	223 (90)
8A—Upper Deschutes River Below Wickiup Dam	Old Mill District Candidate Conservation Agreement with Assurances.	26 (11)

Consideration of Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an IEM and screening analysis which, together with our narrative and interpretation of effects, we consider our DEA of the proposed critical habitat designation and related factors (IeC 2014). The analysis, dated April 30, 2014, was made available for public review from June 18, 2014, through July 18, 2014 (79 FR 34685), and from September 9, 2014, through September 23, 2014 (79 FR 53384). The DEA addressed probable economic impacts of critical habitat designation for the Oregon spotted frog. Following the close of the comment periods, we reviewed and evaluated all information submitted during the comment periods that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Oregon spotted frog is summarized below and available in the screening analysis for the Oregon spotted frog (Iec 2014), available at *http://www.regulations.gov.*

The economic analysis estimated direct (section 7) and indirect costs likely to result from the critical habitat designation for the Oregon spotted frog. The economic impacts of implementing the rule through section 7 of the Act are expected to be limited to additional administrative effort to consider adverse modification in section 7 consultations, which are not expected to exceed $200,000 in a typical year. The critical habitat unit likely to incur the largest incremental administrative costs is Unit 9 (Little Deschutes River) due to a relatively high number of anticipated consultations to consider grazing allotments intersecting the unit.

In terms of indirect costs, the analysis concluded that the designation of critical habitat is unlikely to trigger additional requirements under State or local regulations. In addition, the analysis was supplemented by a separate memorandum assessing the potential perceptional effects on the value of privately owned grazing lands. The analysis concluded that the aggregate value of private lands is less than $100 million.

Therefore, the analysis concluded that the critical habitat designation for the Oregon spotted frog is unlikely to generate costs exceeding $100 million in a single year. The magnitude of benefits is highly uncertain, and quantification would require primary research and the generation of substantial amounts of new data, which was beyond the scope of the analysis and Executive Order 12866.

Exclusions Based on Economic Impacts

The Service considered the economic impacts of the critical habitat designation and the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Oregon spotted frog based on economic impacts.

A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Washington Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts or Homeland Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this final rule, we have determined that no lands within the designation of critical habitat for the Oregon spotted frog are owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security or homeland security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In our proposed critical habitat we extended consideration of exclusion to the Trout Lake NAP Draft Management Plan and the Deschutes Basin HCP. The Trout Lake NAP is managed by the WDNR. In its comment letter on the proposed critical habitat, the WDNR stated that the draft management plan would not be finalized prior to final designation of critical habitat and the critical habitat designation for the lands with the NAP appears appropriate and may help to strengthen conservation support at the site. The Deschutes Basin Multispecies HCP continues to be in the development stage; therefore, no analysis of the conservation benefit can be made for consideration of exclusion. Therefore, lands managed under the Trout Lake NAP Draft Management Plan and areas that may be covered by the Deschutes Basin Multispecies HCP are not excluded from critical habitat.

Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships when we undertake a discretionary section 4(b)(2) exclusion analysis. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below. These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

(i) The degree to which the plan or agreement provides for the conservation of the species or the essential physical or biological features (if present) for the species;

(ii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented;

(iii) The demonstrated implementation and success of the chosen conservation measures;

(iv) The degree to which the record of the plan supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership;

(v) The extent of public participation in the development of the conservation plan;

(vi) The degree to which there has been agency review and required determinations (*e.g.*, State regulatory requirements), as necessary and appropriate;

(vii) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required; and

(viii) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

We find that the Glenwood Valley Coordinated Resource Management Plan and Conservation Agreement, Crosswater Environmental Plan, Sunriver Management Plans, and Old Mill District Candidate Conservation Agreement with Assurances all fulfill the above criteria. We are excluding these lands because the plans adequately provide for the long-term conservation of the Oregon spotted frog; such exclusion is likely to result in the continuation, strengthening, or encouragement of important conservation partnerships; and the Secretary has determined that the benefits of excluding such areas outweigh the benefits of including them in critical habitat as detailed here.

Glenwood Valley Coordinated Resource Management Plan and Conservation Agreement

In this final designation, the Secretary has exercised her discretion under section 4(b)(2) of the Act to exclude from this critical habitat designation 2,625 ac (1,062 ha) of private lands and 2 ac (1 ha) of Klickitat County lands that are covered under a Coordinated Resource Management Plan and Conservation Agreement (Agreement). The excluded area falls within a portion of the proposed Unit 6 (Middle Klickitat River) (78 FR 53538, August 29, 2013).

The Service worked directly with several Glenwood Valley private landowners (hereafter known as Glenwood Valley ranchers) regarding conservation actions that are being implemented through this Agreement on a subset of private lands within the Glenwood Valley/Conboy Lake area. Glenwood Valley Ranchers collaboratively developed a voluntary resource management plan and conservation agreement with the Service to conserve the Oregon spotted frog while continuing their ranching operations in an economically viable manner. This 20-year agreement was approved and signed by the Service, participating Glenwood Valley ranchers, and Klickitat County on June 29, 2015 (USFWS et al. 2015).

Under the agreement, the participating Glenwood Valley ranchers manage their lands and water in a manner that is compatible with the long-term conservation of the Oregon spotted frog and in partnership with the adjacent Conboy Lake NWR. The management plan uses a combination of water management, livestock grazing, and haying as the primary tools on these private lands to provide vegetation management within Oregon spotted frog habitats and to maintain adequate wetland breeding areas and deeper-water overwintering areas for the frog. Although some of these practices may impact individual frogs, overall these practices contribute to a positive long-term conservation benefit for the species and its habitat.

Benefits of Inclusion—Glenwood Valley Coordinated Resource Management Plan and Conservation Agreement

We find that there are minimal benefits to including Glenwood Valley ranchers' lands in critical habitat. As discussed above under *Application of Section 4(b)(2) of the Act,* the primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

Because the Glenwood Valley ranchers' lands are currently occupied by the Oregon spotted frog, a Federal action with potential adverse effects would trigger a jeopardy analysis. Should critical habitat be designated, an adverse modification analysis would also be triggered by the action. If such a Federal nexus were to occur, it would most likely result from the granting of Federal funds to manage the lands and or Federal permitting to upgrade water control structures to benefit the Oregon spotted frog. However, we anticipate that any section 7 consultations related to funding of upgrades to water control structures or habitat management are not likely to provide much added benefit to the species, since the action being consulted on is itself intended to benefit this species. In addition, because one of the primary threats to the species is habitat loss and degradation, a section 7 jeopardy analysis would evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether or not critical habitat is designated for these lands. Project modifications requested to avoid adverse modification would likely be the same as those needed to avoid jeopardy. Therefore, we anticipate that section 7 consultation analyses will likely result in no difference between conservation recommendations to avoid jeopardy or adverse modification in occupied areas of critical habitat, making the incremental benefit of designating critical habitat in this case low at best.

Another benefit of including lands in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. Identifying areas of high conservation value for the Oregon spotted frog can help focus and promote conservation efforts by other parties. Designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Oregon spotted frog or its habitat that reaches a wider audience can be of benefit to future conservation efforts. In this case, however, the potential educational benefit of critical habitat is reduced due to the extensive knowledge by the State, Klickitat County, and private landowners about the presence of the frog in this area of the Glenwood Valley; the location of Conboy Lake NWR immediately adjacent to these areas (on which critical habitat will remain designated); and the limited number of private landowners encompassed by the critical habitat designation. Because of Conboy Lake NWR's proximity to private ranching lands and the importance of water management in the Glenwood Valley for both the Oregon spotted frog and ranching activities, refuge staff frequently interact with ranchers to discuss the management of water resources and the conservation of the frog. This interaction has increased the ranchers' understanding of the ecological value of their land and has emphasized the importance of this ongoing collaboration between the ranchers and the Service.

The incremental benefit from designating critical habitat for the Oregon spotted frog on these private lands is further minimized due to the long-term conservation agreement recently signed by participating ranchers, Klickitat County, and the Service (USFWS et al. 2015). These ranchers have committed to implementing management for the conservation of the Oregon spotted frog that will improve maintenance of habitat that contains the essential physical or biological features to support the frog. We are confident that the Agreement signed by participating ranchers will be successful in conserving habitat for the frog, as a number of ongoing actions conducted by participating ranchers have contributed to the frogs' persistence in this area. The implementation of the Agreement provides greater protection to Oregon spotted frog habitat than the designation of critical habitat since the provisions of the Agreement are intended to improve water management and the habitat conditions to support the long-term conservation of the species on these lands (critical habitat designation does not require active management, only avoidance of destruction or adverse modification). In many cases, this work is accomplished without Federal funding, which highlights these landowners' willingness to implement the partnership. We have no information to suggest that the designation of critical habitat on these properties would generate any appreciable added benefit beyond what is outlined in the Agreement.

Benefits of Exclusion—Glenwood Valley Coordinated Resource Management Plan and Conservation Agreement

The benefits of excluding these private properties from designated critical habitat are relatively greater. We developed a partnership with Glenwood Valley ranchers and can use these properties as an example of land uses that can be compatible with Oregon spotted frog conservation given it is now largely a management-dependent species. This partnership is evidenced by the Agreement provisions that are anticipated to improve the conservation status of the Oregon spotted frog. They include: (1) Seasonally retaining water longer on inundated fields to improve the successful development of tadpoles and subsequent migration of juvenile frogs from potential breeding sites; (2) support of efforts to upgrade or replace key water control structures to facilitate this water management; (3) ongoing vegetation management of reed canary grass to support suitable wetland breeding habitats and to allow migratory movements of frogs; (4) periodic ditch cleaning conducted in a manner that reduces direct and indirect impacts to frogs, while maintaining these water sources in a condition suitable for summer holding habitat; and (5) opportunities to conduct Oregon spotted frog surveys on private lands as part of an adaptive management process. These surveys will help determine levels of use and provide options for more site-specific management actions and options for periodically translocating frogs to more secure sites. Measures contained in the Agreement are consistent with recommendations from the Service for the conservation of the Oregon spotted frog, and will afford benefits to the species and its habitat. The Service accrues a significant benefit from encouraging the development of such voluntary conservation agreements in cooperation with non-Federal partners. Because the majority of occurrences of endangered or threatened species are on non-Federal lands, partnerships with non-Federal landowners and land managers are vital to the conservation of listed species. Therefore, the Service is committed to maintaining and encouraging such partnerships through the recognition of positive conservation contributions.

Excluding these private properties from critical habitat designation will provide a significant benefit in terms of sustaining and enhancing the current partnership between the Service and participating Glenwood Valley ranchers, as well as other partners who participate in Oregon spotted frog habitat management decisionmaking. The willingness of these private landowners to undertake conservation efforts for the benefit of the Oregon spotted frog, and work with the Service and others to develop and employ conservation actions, will continue to reinforce those conservation efforts and our partnership, which contribute toward achieving recovery of the Oregon spotted frog. We consider this voluntary partnership in conservation vital to the further development of our understanding of the status of the Oregon spotted frog on agricultural lands and the further refinement of the levels of compatible agricultural activity on such lands. This information is necessary for us to implement recovery actions such as habitat protection, restoration, and beneficial management actions for this species. In addition, exclusion will provide the landowner with relief from any potential additional regulatory burden associated with the designation of critical habitat, whether real or perceived, which we consider to be a significant benefit of exclusion in acknowledging the positive contributions of our conservation partners.

Together, States, counties, local jurisdictions, conservation organizations, and private landowners can implement various cooperative conservation actions (such as Safe Harbor Agreements, HCPs, and other conservation plans, particularly large, regional conservation plans that involve numerous participants and/or address landscape-level conservation of species and habitats) that we would be unable to accomplish otherwise. These private landowners have made a commitment to develop and implement this Agreement, which will maintain and enhance habitat favorable to the Oregon spotted frog, and can engage and encouraged other parties, both public and private, to join in conservation partnerships. These private landowners serve as a model of voluntary conservation and may aid in fostering future voluntary conservation efforts by other parties in other locations for the benefit of listed species. Most endangered or threatened species do not occur on Federal lands. As the recovery of these species, and in particular the Oregon spotted frog, will, therefore, depend on the willingness of non-Federal landowners to partner with us to engage in conservation efforts (including active management of habitat), we consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion.

Benefits of Exclusion Outweigh Benefits of Inclusion—Glenwood Valley Coordinated Resource Management Plan and Conservation Agreement

The Secretary has determined that the benefits of excluding the private lands of participating Glenwood Valley ranchers from the designation of critical habitat for the Oregon spotted frog outweigh the benefits of including these areas in critical habitat. The regulatory and informational benefits of including the private lands of participating Glenwood Valley ranchers in critical habitat are minimal. Furthermore, any potential limited benefits of inclusion on the section 7 process are relatively unlikely to be realized, because a Federal nexus on these lands would rarely occur. If one were to occur, it would most likely be with the Service, Natural Resources Conservation Service, or Army Corps of Engineers, and their actions would be geared toward the conservation benefits of restoring and enhancing habitat specifically for the Oregon spotted frog. This type of management is focused on the maintenance of open wetland breeding habitats with short-statured vegetative conditions, and providing sufficient sources of adjacent habitats of deeper water for maturation and overwintering that the Oregon spotted frog requires for persistence. Since any action likely to be the subject of consultation under the adverse modification standard on this area would be largely focused on providing positive habitat benefits for the Oregon spotted frog, we find it unlikely that critical habitat would result in any significant additional benefit to the species. Furthermore, the informational benefits of including this area in critical habitat are further reduced since significant management actions are already under way to manage habitat on the adjacent Conboy Lake NWR for the benefit of Oregon spotted frog. In this instance, the Agreement with the Glenwood Valley Ranchers contains provisions for conserving and enhancing habitat on which the Oregon spotted frog relies, and those provisions exceed the conservation benefits that would be afforded through section 7 and, therefore, reduce the benefits of designating this area as critical habitat.

In contrast, the benefits derived from excluding the private lands of participating Glenwood Valley ranchers are substantial. Excluding these lands will help us maintain and foster an important and successful partnership with these private landowners. They have voluntarily supported stewardship of habitat beneficial to the conservation of the Oregon spotted frog on working agricultural lands. The exclusion of participating Glenwood Valley ranchers' lands will serve as a positive conservation model, and provides encouragement for other private landowners to partner with the Service for the purpose of conserving listed species. The positive conservation benefits that may be realized through the maintenance of this existing partnership, as well as through the encouragement of future such partnerships, and the importance of developing such partnerships on non-Federal lands for the benefit of listed species in other areas, are such that we consider the positive effect of excluding willing conservation partners from critical habitat to be a significant benefit of exclusion. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion in this case.

Exclusion Will Not Result in the Extinction of the Species—Glenwood Valley Coordinated Resource Management Plan and Conservation Agreement

We have determined that exclusion of approximately 2,627 ac (1,063 ha) for the portion of the Unit 6 managed under the Agreement implemented by participating Glenwood Valley ranchers will not result in extinction of the Oregon spotted frog. Actions covered by the Agreement will not result in the extinction of the Oregon spotted frog because the management actions implemented on participating Glenwood Valley ranchers' lands are designed to conserve and enhance Oregon spotted frog habitat during the period of the agreement, plus a significant portion of Oregon spotted frog habitat within Unit 6 occurs on adjacent Conboy Lake NWR lands and the Refuge is specifically managing habitat for the frog. We anticipate that management of Oregon spotted frog habitat on these private lands will continue and may be modified over time to better enhance Oregon spotted frog habitat as new information is gained and addressed through the adaptive management process under the Agreement.

Crosswater Environmental Plan

In this final designation, the Secretary has exercised her discretion to exclude 207 ac (84 ha) of lands from critical habitat, under section 4(b)(2) of the Act, that are owned by the Sunriver Limited Partnership and managed under the Crosswater Environmental Plan (CEP). The excluded area falls within a portion of Subunit 8A (78 FR 53538, August 29, 2013).

The Crosswater Resort comprises an area of 617 ac (250 ha), including the proposed Oregon spotted frog critical habitat, at the confluence of the Deschutes and Little Deschutes Rivers south of Sunriver, Oregon. The Crosswater Resort is a private golf and residential community under ownership of the Sunriver Limited Partnership. Oregon spotted frog conservation measures outlined in the CEP and voluntarily implemented by the Crosswater Resort in partnership with Sunriver Nature Center and Observatory (SRNCO) for over a decade have contributed to sustaining a population of Oregon spotted frogs on private lands within the Crosswater Resort. The CEP, developed and implemented prior to 2003, contains conservation measures that are specific to Oregon spotted frog, such as the removal of invasive bullfrogs from wetlands and ponds on private lands that are inhabited by the Oregon spotted frog and maintaining buffers for herbicide application between golf courses and wetlands inhabited by the frog. The CEP also addresses management of vegetation encroachment into wetlands that may threaten the amount of open water habitat for spotted frogs. In addition to implementing voluntary conservation measures for spotted frogs through the CEP, the preservation of wetland and riparian areas along the Deschutes and Little Deschutes Rivers under a conservation easement provide protection to spotted frog habitat. These ongoing management activities combined with a conservation easement for wetlands have reduced threats to the Oregon spotted frog and its habitat by maintaining habitat conditions that are suitable for all life-history stages of the species.

The Crosswater Resort has been a conservation partner for over a decade. In 2009, the Service worked with

Crosswater to monitor water quality in ponds and wetlands inhabited by the Oregon spotted frog to determine whether or not the buffer for herbicide use adjacent to wetlands outlined in the CEP was effectively protecting water quality. A report published by the Service in 2009 indicated that the Integrated Pest Management practices implemented by Crosswater Resort minimized the input of herbicides into water bodies inhabited by the species. Oregon spotted frog surveys, conducted in partnership with the USGS and SRNCO on private lands within the Crosswater Resort, have been provided to the Service since 2000. Habitat protection, management and monitoring conducted at Crosswater Resort have significantly contributed to our understanding of Oregon spotted frog biology and responses to habitat management.

Benefits of Inclusion—Crosswater Environmental Plan

We find there are minimal benefits to including the Crosswater Resort lands in critical habitat. As dicussed above under *Application of Section 4(b)(2) of the Act,* the primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations have the potential to provide greater benefit to the recovery of a species than would listing alone. However, because one of the primary threats to the species is habitat loss and degradation, a section 7 jeopardy analysis would evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether or not critical habitat is designated for these lands, and project modifications requested to avoid adverse modification would likely be the same as those needed to avoid jeopardy. Therefore, we anticipate that section 7 consultation analyses will likely result in no difference between conservation recommendations to avoid jeopardy or adverse modification in occupied areas of critical habitat, making the incremental benefit of designating critical habitat in this case low at best.

The inclusion of these private lands as critical habitat could provide some additional Federal regulatory benefits for the species consistent with the conservation standard addressed in the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004). As noted above, a potential benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands would not likely result in the destruction or adverse modification of critical habitat. However, this additional analysis to determine whether a Federal action is likely to result in destruction or adverse modification of critical habitat is not likely to be significant because these covered lands are not under Federal ownership, making the application of section 7 less likely. Overall, given the low likelihood of a Federal nexus occurring on these lands, we believe the regulatory benefit of a critical habitat designation on these lands, if any, may be limited. As described above, the presence of a beneficial conservation plan and the history of implementing conservation actions specific to the Oregon spotted frog on these lands further reduces this benefit of including these lands in critical habitat.

The incremental benefit of inclusion is reduced because of the ongoing implementation of management actions by the Crosswater Resort that benefit the conservation of the Oregon spotted frog and its habitat, as discussed above. The Crosswater Resort has been implementing specific management actions that maintain and enhance spotted frog habitat for over a decade. Monitoring of the spotted frog population conducted at Crosswater Resort has shown that the ongoing management is providing benefits to the species. These management actions provide greater benefits to spotted frog habitat than a designation of critical habitat would, since these actions actively improve the breeding, rearing, and overwintering habitat. Therefore, the existing management at this site will provide greater benefit than the regulatory designation of critical habitat, which requires only the avoidance of adverse modification and does not require the creation, improvement, or restoration of habitat.

Another potential benefit of including lands in a critical habitat designation is that such inclusion raises the awareness of landowners, State and local governments, and the public regarding the potential conservation value of an area. This knowledge can help focus and promote conservation efforts by identifying areas of high conservation value for the Oregon spotted frog. The designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Oregon spotted frog or its habitat that reaches a wider audience can be of benefit to future conservation efforts. The Crosswater Resort has been working on implementing conservation measures for the Oregon spotted frog with assistance from SRNCO, which has been a key partner in providing education and outreach to landowners and visitors to the Sunriver area for over 20 years about the Oregon spotted frog. Because of this ongoing education in the Sunriver area, we have been able to hold public meetings about the proposed critical habitat and listing without contention. Furthermore, the management and monitoring of spotted frog habitat at Crosswater Resort for over a decade has provided us with information about how to improve spotted frog habitat through management. The educational benefits of including this area in the designation of critical habitat are reduced by the above-mentioned public education that is ongoing in the Sunriver area.

Benefits of Exclusion—Crosswater Environmental Plan

The benefits of excluding private lands at Crosswater Resort from critical habitat are substantial. The partnership in Oregon spotted frog conservation is evidenced by the conservation and management actions that provide a benefit to the Oregon spotted frog and its habitat for over a decade; monitoring results indicate that such management actions improve breeding, rearing, and overwintering habitat for spotted frog. The CEP includes specific conservation measures for the Oregon spotted frog and its habitat, including bull frog removal and management of encroaching vegetation in wetlands inhabited by spotted frogs. The CEP also requires a buffer for the application of herbicide on golf courses from wetlands. Annual monitoring conducted by the USGS in partnership with SRNCO validates that these types of management activities are effectively providing conservation benefits to the species. The Crosswater Resort retains a conservation easement that prohibits development on all wetland and riparian areas along the Deschutes and Little Deschutes River, thereby providing additional protections to Oregon spotted frog habitat.

Biological information gathered while working in partnership with the Crosswater Resort will facilitate the development of strategies to conserve the species and inform conservation efforts for the species in other areas. Without the partnership between the Service, Crosswater Resort, and SRNCO, management actions that benefit the spotted frog would not occur, and important breeding, rearing, and overwintering habitat for the spotted frog may not be maintained and enhanced. Excluding lands from critical habitat designation that are managed under the CEP and already protected through a conservation easement will affirm and sustain the partnership, and is expected to enhance the working relationship between the Service and property owners at Crosswater Resort and the Sunriver Limited Partnership. The designation of critical habitat on private lands within Crosswater Resort may have a negative effect on the conservation partnership between the Service and the owners of Crosswater Resort who have agreed to future implementation of conservation measures for the Oregon spotted frog and its habitat. By excluding these lands, we affirm the conservation partnership with Crosswater Resort that not only are providing conservation benefits to the Oregon spotted frog and its habitat during the present time but also into the future. Excluding the lands managed under the CEP and protected through an existing conservation easement from critical habitat designation will sustain the long-standing conservation partnership between the Service, private landowners that reside within Crosswater Resort, and the Sunriver Limited Partnership.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Crosswater Environmental Plan

The primary benefit of including these lands as critical habitat for the Oregon spotted frog is the regulatory requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. However, this benefit is reduced for the following reasons. First, the likelihood of a Federal nexus on these lands is low. Furthermore, these lands are occupied by the Oregon spotted frog and we anticipate that even if a Federal nexus exists and triggers the need for section 7 consultation, there will be no difference between conservation recommendations to avoid jeopardy and those to avoid adverse modification in occupied areas of critical habitat. Finally, the benefits of including these lands in critical habitat are reduced due to the existing easement and ongoing management at the site that provides a greater benefit than the regulatory designation of critical habitat.

Another benefit of including these lands in critical habitat is the opportunity to educate landowners, State and local governments, and the public regarding the potential conservation value of the area. However, we have determined that the above-mentioned entities are all aware of the conservation value of these lands for the Oregon spotted frog and that education of the private landowners that reside within and visit Crosswater Resort has been ongoing for over a decade. Therefore, the benefit of designating these lands as critical habitat is minimal.

The benefits of excluding these lands from the critical habitat designation are greater than inclusion for the following reasons. The exclusion will affirm and maintain a partnership with private landowners that promotes the conservation of the species. Additionally, the ongoing implementation of habitat improvements to promote Oregon spotted frog conservation provides strong evidence that our partnership with the Crosswater Resort will continue into the future.

For these reasons, stated above, the Secretary has determined that the benefits of excluding the 207 ac (84 ha) on private lands within Crosswater Resort from the designation of critical habitat for the Oregon spotted frog outweigh the benefits of including these areas in critical habitat.

Exclusion Will Not Result in Extinction of the Species—Crosswater Environmental Plan

We have determined that exclusion of approximately 207 ac (84 ha) on private lands within Crosswater Resort will not result in the extinction of the Oregon spotted frog. This exclusion will not result in extinction of the Oregon spotted frog because the CEP outlines specific conservation actions for wetlands and riparian areas inhabited by the frog that provide for the needs of the species by protecting, restoring, and enhancing all of the Oregon spotted frog habitat at Crosswater Resort along the Deschutes and Little Deschutes Rivers. Further, for projects having a Federal nexus and potentially affecting the Oregon spotted frog, the jeopardy standard of section 7 of the Act, coupled with protection provided by the CEP, would provide a level of assurance that this subspecies will not go extinct as a result of excluding these lands from the critical habitat designation. Critical habitat for the Oregon spotted frog would be designated in the Deschutes River west of Crosswater Resort and within the Little Deschutes River south of Crosswater Resort. Oregon spotted frogs inhabit the Deschutes and Little Deschutes Rivers in this area. Therefore, actions that result in a Federal nexus would undergo section 7 consultation with the Service.

Sunriver Management Plans

In this final designation, the Secretary has exercised her discretion under section 4(b)(2) of the Act to exclude from this critical habitat designation 223 ac (90 ha) of private land owned by the members of the Sunriver Owners Association (SROA) and covered under the Sunriver Great Meadow Management Plan (GMMP). The excluded area falls within a portion of the proposed Subunit 8A (78 FR 53538, August 29, 2013).

The Sunriver Community comprises an area of 3,373 ac (1,365 ha), including approximately 219 ac (89 ha) of proposed Oregon spotted frog critical habitat and 223 ac (90 ha) of critical habitat that was revised via mapping for the final rule. Sunriver hosts the largest known population of Oregon spotted frogs in the Upper Deschutes River sub-basin downstream of Wickiup Dam. Oregon spotted frog conservation measures voluntarily implemented by the SRNCO for over two decades and preservation of wetland and riparian areas along the Deschutes River under the Sunriver GMMP have contributed to sustaining a large population of Oregon spotted frogs on private lands in the Sunriver area. Common areas within the Sunriver Community, including wetlands, ponds, and meadows, are managed under the authority of the SROA via the Sunriver GMMP. Through a contract with SROA, the SRNCO has been managing a system of weirs within the waterways and ponds to improve breeding, rearing, and overwintering habitat conditions for the Oregon spotted frog. The SRNCO also has been voluntarily removing invasive bullfrogs from wetlands and ponds in Sunriver that are inhabited by the Oregon spotted frog. These ongoing management activities have reduced threats to the Oregon spotted frog and its habitat by maintaining habitat conditions that are suitable for all life-history stages of the species. The SRNCO has been a conservation partner since the Oregon spotted frog became a candidate species for listing in 1993. Monitoring, research, and habitat management conducted by SRNCO have significantly contributed to our understanding of Oregon spotted frog biology and responses to habitat management.

Benefits of Inclusion—Sunriver Management Plans

We find there are minimal benefits to including the Sunriver Management Plans lands in critical habitat. As dicussed above under *Application of Section 4(b)(2) of the Act,* the primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations have the potential to provide greater benefit to the recovery of a species than would listing alone. However, because one of the primary threats to the species is habitat loss and degradation, a section 7 jeopardy analysis would evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether or not critical habitat is designated for these lands and project modifications requested to avoid adverse modification would likely be the same as those needed to avoid jeopardy. Therefore, we anticipate that section 7 consultation analyses will likely result in no difference between conservation recommendations to avoid jeopardy or adverse modification in occupied areas of critical habitat, making the incremental benefit of designating critical habitat in this case low at best.

The inclusion of these private lands as critical habitat could provide some additional Federal regulatory benefits for the species consistent with the conservation standard addressed in the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004). As noted above, a potential benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands would not likely result in the destruction or adverse modification of critical habitat. However, this additional analysis to determine whether a Federal action is likely to result in destruction or adverse modification of critical habitat is not likely to be significant because these covered lands are not under Federal ownership, making the application of section 7 less likely. Overall, given the low likelihood of a Federal nexus occurring on these lands, we believe the regulatory benefit of a critical habitat designation on these lands, if any, may be limited. As described above, the presence of a beneficial conservation plan and the history of implementing conservation actions specific to the Oregon spotted frog on these lands further reduces this benefit of including these lands in critical habitat.

The incremental benefit of inclusion is reduced because of the ongoing implementation of management actions by the Sunriver Nature Center, under contract with the SROA, that benefit the conservation of the Oregon spotted frog and its habitat, as discussed above. Sunriver has been implementing specific management actions that maintain and enhance spotted frog habitat for over two decades. Monitoring of the spotted frog population conducted by the SRNCO has shown that the management being implemented is providing benefits to the species, and Sunriver hosts the largest population of spotted frogs downstream of Wickiup Dam. These management actions provide greater benefits to spotted frog habitat than the designation of critical habitat, since these actions actively improve the breeding, rearing, and overwintering habitat. Therefore, the existing management at this site will provide greater benefit than the regulatory designation of critical habitat, which requires only the avoidance of adverse modification and does not require the creation, improvement, or restoration of habitat.

Another potential benefit of including lands in a critical habitat designation is that doing so raises the awareness of landowners, State and local governments, and the public regarding the potential conservation value of an area. This knowledge can help focus and promote conservation efforts by identifying areas of high conservation value for the Oregon spotted frog. The designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Oregon spotted frog or its habitat that reaches a wider audience can be of benefit to future conservation efforts. The SRNCO has been educating landowners and visitors to Sunriver Resort for over 20 years about the Oregon spotted frog. Because of this ongoing education in the Sunriver area, we have been able to hold public meetings about the proposed critical habitat and listing without contention. High school and college students in central Oregon are gaining opportunities to learn about the Oregon spotted frog through the efforts of the SRNCO. The management and monitoring of spotted frog habitat in Sunriver that has been implemented by SRNCO for the past 20 years has provided us with information about how to improve Oregon spotted frog habitat through management. The educational benefits of including this area in the designation of critical habitat are reduced by the above-mentioned public education that is ongoing through the SRNCO.

Benefits of Exclusion—Sunriver Management Plans

The benefits of excluding private lands in Sunriver lands from critical habitat are substantial. Conservation measures that provide a benefit to the Oregon spotted frog and its habitat have been implemented since Oregon spotted frogs were determined to be a candidate for listing in 1993. Since that time, the Service has worked in partnership with the SRNCO and SROA to address the needs of the Oregon spotted frog. Evidence of this partnership is the ongoing management over the last 20 years that has improved breeding, rearing, and overwintering habitat. The GMMP and specific habitat enhancement measures implemented by SRNCO provide a benefit to the Oregon spotted frog and its habitat. The threat of low-water conditions in wetlands during the breeding, rearing, and overwintering period has been reduced by the ongoing management. Sunriver maintains water levels in wetlands through a weir system that offsets impacts to this habitat that occurs when water is stored behind Wickiup Dam from October through April. Water level management combined with bull frog removal has improved habitat for Oregon spotted frogs. Annual monitoring conducted by SRNCO validates that these types of management activities are effectively providing conservation benefits to the species.

Biological information gathered while working with these private landowners will facilitate the development of strategies to conserve the species and inform conservation efforts for the species in other areas. Without the partnership between the Service, SROA, and SRNCO, management actions that benefit the spotted frog would not occur and important breeding, rearing, and overwintering habitat for the spotted frog may not be maintained and enhanced. Excluding lands managed under the Sunriver GMMP from critical habitat designation will affirm and sustain the partnership and is expected to enhance the working relationship between the Service and property owners in Sunriver. The designation of critical habitat on private lands within Sunriver may have a negative effect on the conservation partnership between the Service and the SROA and SRNCO who have agreed to future implementation of conservation measures for the Oregon spotted frog and its habitat. By excluding these lands, we affirm the conservation partnership with SROA and SRNCO that not only are providing conservation benefits to the Oregon spotted frog and its habitat during the present time but also into the future. Excluding the lands managed under the Sunriver GMMP from critical habitat designation will sustain the long-standing conservation partnership between the Service and the Sunriver Community.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Sunriver Management Plans

The primary benefit of including these lands as critical habitat for the Oregon spotted frog is the regulatory requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. However, this benefit is reduced for the following reasons. First, the benefits of inclusion are reduced because the likelihood of a Federal nexus on these lands is low. Furthermore, these lands are occupied by the Oregon spotted frog, and we anticipate that if a Federal nexus exists and triggers the need for section 7 consultation, there will be no difference between conservation recommendations to avoid jeopardy or adverse modification in occupied areas of critical habitat. Finally, the benefits of including these lands in critical habitat are reduced due to the commitment to management at the site that provides a greater benefit than the regulatory designation of critical habitat.

Another benefit of including these lands in critical habitat is the opportunity to educate landowners, State and local governments, and the public regarding the potential conservation value of the area. However, we have determined that the above-mentioned entities are all aware of the conservation value of these lands for the Oregon spotted frog and that education of the public and students has been ongoing since 1993. Therefore, the benefit of designating these lands as critical habitat is minimal.

The benefits of excluding these lands from the critical habitat designation are greater than inclusion for the following reasons. The exclusion will affirm and maintain a partnership with private landowners that is promoting conservation of the species. Additionally, the ongoing implementation of habitat improvements to promote Oregon spotted frog conservation provides strong evidence that our partnership with the SROA and SRNCO will continue into the future.

For these reasons, stated above, the Secretary has determined that the benefits of excluding the 223 ac (90 ha) on private lands in the Sunriver area from the designation of critical habitat for the Oregon spotted frog outweigh the benefits of including these areas in critical habitat.

Exclusion Will Not Result in Extinction of the Species—Sunriver Management Plans

We have determined that exclusion of approximately 223 ac (90 ha) on Sunriver private lands will not result in the extinction of the Oregon spotted frog. This exclusion will not result in extinction of the Oregon spotted frog because the Sunriver GMMP and ongoing active habitat enhancement provide for the needs of the species by protecting, restoring, and enhancing all of the Oregon spotted frog habitat within Sunriver along the Deschutes River and implementing species-specific conservation measures designed to avoid and minimize impacts to the Oregon spotted frog. Further, for projects having a Federal nexus and potentially affecting the Oregon spotted frog, the jeopardy standard of section 7 of the Act coupled with protection provided by the Sunriver GMMP would provide a level of assurance that this subspecies will not go extinct as a result of excluding these lands from the critical habitat designation. Critical habitat for the Oregon spotted frog would be designated in the Deschutes River west of Sunriver. Oregon spotted frogs that inhabit Sunriver use the Deschutes River in this area. Therefore, actions that result in a Federal nexus would undergo section 7 consultation with the Service.

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

CCAAs and SHAs are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an "enhancement of survival" permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. The Service also provides enrollees assurances that we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary section 4(b)(2) exclusion analysis, we will always consider areas covered by an approved CCAA/SHA/HCP, and generally exclude such areas from a designation of critical habitat if three conditions are met:

1. The permittee is properly implementing the CCAA/SHA/HCP and is expected to continue to do so for the term of the agreement. A CCAA/SHA/

HCP is properly implemented if the permittee is, and has been, fully implementing the commitments and provisions in the CCAA/SHA/HCP, Implementing Agreement, and permit.

2. The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP would also protect the habitat features of the similar species.

3. The CCAA/SHA/HCP specifically addresses the habitat of the species for which critical habitat is being designated and meets the conservation needs of the species in the planning area.

We believe that the Old Mill District CCAA fulfills all of the above criteria.

Old Mill District CCAA

In this final designation, the Secretary has exercised her discretion under section 4(b)(2) of the Act to exclude from this critical habitat designation 26 ac (11 ha) of private lands covered under the Old Mill District CCAA. The excluded area falls within a portion of the proposed Subunit 8A (78 FR 53538, August 29, 2013).

The Old Mill District CCAA was developed to protect and manage 29 ac (12 ha) of Oregon spotted frog habitat, including 26 ac (11 ha) that were proposed as critical habitat for the Oregon spotted frog, while operating the 170-ac (69-ha) Old Mill District mixed-use development complex. The CCAA covers only the Oregon spotted frog. The permit associated with this CCAA was issued September 18, 2014, has a term of 20 years, and covers activities primarily associated with water and vegetation management, potential predator control, and riparian use. Conservation measures include monitoring and maintaining sufficient water levels in a manmade pond to support breeding, rearing, and overwintering habitat; reduction of vegetation encroachment into the manmade pond to maintain open-water areas for breeding; removal of nonnative predators in the pond should they be discovered during annual surveys; and protection of the riparian zone along the banks of the Deschutes River, including marsh habitat occupied by Oregon spotted frogs, within the covered lands, through the use of signs and temporary fencing. These activities reduce or eliminate threats to the Oregon spotted frog and its habitat by creating or maintaining habitat conditions that are suitable for all life-history stages of the species through the implementation of conservation measures. Further, conservation measures within the CCAA include monitoring and management of areas within the covered lands and outside of critical habitat that may provide habitat for Oregon spotted frogs in the future as the Old Mill District continues to develop a stormwater management system. Stormwater bioswales will be designed to catch runoff before reaching the riparian areas and wetlands of the Deschutes River that are occupied by Oregon spotted frogs. The bioswales will be monitored for frog use and managed to reduce the threat of stranding frogs during the breeding season. The landowners have been voluntarily implementing Oregon spotted frog conservation measures outlined in the CCAA since Oregon spotted frogs were discovered in the Old Mill District in 2012, and these conservation efforts are expected to occur throughout the 20-year term of the CCAA agreement.

Benefits of Inclusion—Old Mill District CCAA

The primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, any difference in predicted outcomes between these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This difference could, in some instances, lead to different results and different regulatory requirements. Thus, critical habitat designations have the potential to provide greater benefit to the recovery of a species than would listing alone. However, because one of the primary threats to the species is habitat loss and degradation, a section 7 jeopardy analysis would evaluate the effects of the action on the conservation or function of the habitat for the species regardless of whether or not critical habitat is designated for these lands and project modifications requested to avoid adverse modification would likely be the same as those needed to avoid jeopardy. Therefore, we anticipate that section 7 consultation analyses will likely result in no difference between conservation recommendations to avoid jeopardy or adverse modification in occupied areas of critical habitat, making the incremental benefit of designating critical habitat in this case low at best.

The inclusion of these private lands as critical habitat could provide some additional Federal regulatory benefits for the species consistent with the conservation standard addressed in the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004). As noted above, a potential benefit of inclusion would be the requirement that a Federal agency ensure that its actions on these non-Federal lands would not likely result in the destruction or adverse modification of critical habitat. However, this additional analysis to determine whether a Federal action is likely to result in destruction or adverse modification of critical habitat is not likely to be significant because these covered lands are not under Federal ownership, making the application of section 7 less likely. Overall, given the low likelihood of a Federal nexus occurring on these lands, we believe the regulatory benefit of a critical habitat designation on these lands, if any, may be limited.

As described above, the presence of a beneficial conservation plan and the history of implementing conservation actions specific to the Oregon spotted frog on these lands further reduces this benefit of including these lands in critical habitat. The conservation measures that have been implemented and will continue to be implemented under the Old Mill District CCAA focus on reducing threats to the habitat such as vegetation encroachment and dropping water levels. These management actions are likely to provide greater benefits to the Oregon spotted frog habitat than would the designation of critical habitat, since these actions actively improve the breeding, rearing, and overwintering habitat. The designation of critical habitat does not require any active management. Therefore, the benefits of including these lands in critical habitat are reduced due to the commitment to management at this site that provides greater benefit than the regulatory designation of critical habitat, which requires only the avoidance of adverse modification and does not require the creation, improvement, or restoration of habitat.

Another potential benefit of including lands in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This knowledge can help focus and promote conservation efforts by identifying areas of high conservation value for the Oregon spotted frog. The designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Oregon spotted frog or its habitat that reaches a wider audience can be of benefit to future conservation efforts. However, in this case, designation of critical habitat would result in little, if any, additional educational benefit, because the conservation needs of the Oregon spotted frog are already well-recognized in the Old Mill District. The Old Mill District CCAA covers an area that receives high public use within the shopping area and along the river, and the discovery of Oregon spotted frogs within a manmade pond at the Old Mill in 2012 gained immediate awareness from the public. Furthermore, the Oregon spotted frogs received immediate attention from the landowners, spotted frog researchers, and the public media, since the known distribution of the species at the time ended approximately 17 mi (27 km) upstream on the Deschutes National Forest. The Sunriver Nature Center naturalist, a local expert on Oregon spotted frogs, began monitoring the newly found population, providing habitat management recommendations to the landowner that led to the development of the CCAA. The Sunriver Nature Center naturalist also began mentoring Oregon spotted frog research focused in the Old Mill District for high school and college students, providing an educational benefit to the community and providing the Service with new information on the species. Given that the Oregon spotted frog population in the Old Mill District is receiving attention from the landowners, public, researchers, and students, an educational benefit already exists and the conservation of the Oregon spotted frog is being promoted.

Benefits of Exclusion—Old Mill District CCAA

The benefits of excluding lands covered under the Old Mill District CCAA from critical habitat are substantial. Conservation measures that provide a benefit to the Oregon spotted frog and its habitat have been implemented since Oregon spotted frogs were detected in the Old Mill District in 2012. Since that time, the owners of private lands within the Old Mill District and the Service have formed a conservation partnership to implement conservation measures for the Oregon spotted frog. Further evidence of this conservation partnership is the development of the Old Mill District CCAA, which was finalized on September 18, 2014. Through the CCAA, the landowner commits to manage vegetation and water levels in a stormwater pond that supports Oregon spotted frog breeding, rearing, and overwintering habitat over a 20-year period. The installation of riparian fencing within the high public use areas has facilitated the reestablishment of riparian vegetation along the banks of the Deschutes River, which provides habitat for Oregon spotted frogs during the summer. Biological information gathered while working with these private landowners will facilitate the development of strategies to conserve the species and inform conservation efforts for the species in other areas. Without the partnership between the Service and the parties to the Old Mill District CCAA, such management would not occur and vegetation encroachment into the pond would reduce breeding and rearing habitat for the frog and the banks of the Deschutes River would not be protected. Excluding these lands managed under the Old Mill District CCAA from critical habitat designation will affirm and sustain the partnership and is expected to enhance the working relationship between the Service and the Old Mill District property owners. The designation of critical habitat on private lands within the Old Mill District may have a negative effect on the conservation partnership between the Service and the landowners who have agreed to future implementation of conservation measures for the Oregon spotted frog and its habitat. By excluding these lands, we affirm the conservation partnership with private landowners that not only are providing conservation benefits to the Oregon spotted frog and its habitat during the present time but also into the future.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Old Mill District CCAA

The primary benefit of including these lands as critical habitat for the Oregon spotted frog is the regulatory requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. However, this benefit is reduced for the following reasons. First, the likelihood of a Federal nexus on these lands is low. Furthermore, these lands are occupied by the Oregon spotted frog, and we anticipate that if a Federal nexus exists and triggers the need for section 7 consultation, there will be no difference between conservation recommendations to avoid jeopardy or adverse modification in occupied areas of critical habitat. Finally, the benefits of including these lands in critical habitat are reduced due to the commitment to management at the site that provides a greater benefit than the regulatory designation of critical habitat.

Another benefit of including these lands in critical habitat is the opportunity to educate landowners, State and local governments, and the public regarding the potential conservation value of the area. However, we determined that the above-mentioned entities are all aware of the conservation value of these lands for the Oregon spotted frog and that education of the public and students has been ongoing since the discovery of this population of Oregon spotted frogs in 2012. Therefore, the benefit of designating these lands as critical habitat is minimal.

The benefits of excluding these lands from the critical habitat designation are greater than inclusion for the following reasons. The exclusion will affirm and maintain a partnership with private landowners that is promoting conservation of the species. Additionally, the ongoing implementation of habitat improvements to promote Oregon spotted frog conservation provides strong evidence that our partnership with private landowners in the Old Mill District will continue into the future.

For these reasons, stated above, the Secretary has determined that the benefits of excluding the 26 ac (11 ha) covered by the Old Mill District CCAA from the designation of critical habitat for the Oregon spotted frog outweigh the benefits of including these areas in critical habitat.

Exclusion Will Not Result in Extinction of the Species—Old Mill District CCAA

We have determined that exclusion of approximately 26 ac (11 ha) in the Old Mill District CCAA covered lands will not result in the extinction of the Oregon spotted frog. Actions covered by the Old Mill CCAA will not result in extinction of the Oregon spotted frog because the CCAA provides for the needs of the species by protecting, restoring, and enhancing all of the Oregon spotted frog habitat within the Old Mill District along the Deschutes River and implementing species-specific conservation measures designed to avoid and minimize impacts to the Oregon spotted frog. Monitoring, as agreed to within the CCAA, will ensure that conservation measures are effective and an adaptive management component of the CCAA allows for modification to future management in response to new information.

Further, for projects having a Federal nexus and potentially affecting the Oregon spotted frog, the jeopardy standard of section 7 of the Act, coupled with protection provided by the voluntary Old Mill CCAA would provide a level of assurance that this species will not go extinct as a result of excluding these lands from the critical habitat designation. Critical habitat for the Oregon spotted frog would be designated in the Deschutes River adjacent to the Old Mill District and outside of the lands covered by the Old Mill CCAA. Oregon spotted frogs that inhabit the covered lands use the Deschutes River in this area. Therefore, actions that result in a Federal nexus would undergo section 7 consultation with the Service. For example, if the Old Mill District were to install a boat ramp that extends into the Deschutes River where critical habitat is designated and a U.S. Army Corps of Engineers permit is required, then section 7 consultation would be required for the species and critical habitat.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration.

The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Oregon spotted frog conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The economic analysis concludes that incremental impacts may occur due to administrative costs of section 7 consultations; however, these are not expected to significantly affect small governments. The designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Oregon spotted frog in a takings implications assessment. Based on the best available information, the takings implications assessment concludes that this designation of critical habitat for the Oregon spotted frog does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of the proposed critical habitat designation with, appropriate State resource agencies in Washington and Oregon. We received comments from WDFW, WDNR, WDOE, and ODFW and have addressed them in the Summary of Comments and Recommendations section of the rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the Federal Government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the Oregon spotted frog. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands occupied by the Oregon spotted frog at the time of listing that contain the physical or biological features essential to conservation of the species, and no tribal lands unoccupied by the Oregon spotted frog that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the Oregon spotted frog on tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Washington Fish and Wildlife Office, Oregon Fish and Wildlife Office—Bend Field Office, and Klamath Falls Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, by revising the entry for "Frog, Oregon spotted" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
AMPHIBIANS							
*	*	*	*	*	*	*	
Frog, Oregon spotted	*Rana pretiosa*	Canada (BC); U.S.A. (CA, OR, WA).	Entire	T	846	17.95(d)	NA
*	*	*	*	*	*	*	

* * * * *

■ 3. In § 17.95, amend paragraph (d) by adding an entry for "Oregon Spotted Frog (*Rana pretiosa*)" in the same order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Oregon Spotted Frog (Rana pretiosa)

(1) Critical habitat units are depicted for Klickitat, Skagit, Skamania, Thurston, and Whatcom Counties in Washington and Deschutes, Jackson, Klamath, Lane, and Wasco Counties in Oregon, on the maps below.

(2) Within these areas, the PCEs of the physical or biological features essential to the conservation of the Oregon spotted frog consist of three components:

(i) *Primary constituent element 1.*—Nonbreeding (N), Breeding (B), Rearing

(R), and Overwintering (O) Habitat. Ephemeral or permanent bodies of fresh water, including, but not limited to, natural or manmade ponds, springs, lakes, slow-moving streams, or pools within or oxbows adjacent to streams, canals, and ditches, that have one or more of the following characteristics:

(A) Inundated for a minimum of 4 months per year (B, R) (timing varies by elevation but may begin as early as February and last as long as September);

(B) Inundated from October through March (O);

(C) If ephemeral, areas are hydrologically connected by surface water flow to a permanent water body (*e.g.*, pools, springs, ponds, lakes, streams, canals, or ditches) (B, R);

(D) Shallow-water areas (less than or equal to 12 inches (30 centimeters), or water of this depth over vegetation in deeper water (B, R);

(E) Total surface area with less than 50 percent vegetative cover (N);

(F) Gradual topographic gradient (less than 3 percent slope) from shallow water toward deeper, permanent water (B, R);

(G) Herbaceous wetland vegetation (*i.e.*, emergent, submergent, and floating-leaved aquatic plants), or vegetation that can structurally mimic emergent wetland vegetation through manipulation (B, R);

(H) Shallow-water areas with high solar exposure or low (short) canopy cover (B, R); and

(I) An absence or low density of nonnative predators (B, R, N).

(ii) *Primary constituent element 2.*— Aquatic movement corridors. Ephemeral or permanent bodies of fresh water that have one or more of the following characteristics:

(A) Less than or equal to 3.1 miles (5 kilometers) linear distance from breeding areas; and

(B) Impediment free (including, but not limited to, hard barriers such as dams, impassable culverts, lack of water, or biological barriers such as abundant predators, or lack of refugia from predators).

(iii) *Primary constituent element 3.*— Refugia habitat. Nonbreeding, breeding, rearing, or overwintering habitat or aquatic movement corridors with habitat characteristics (*e.g.*, dense vegetation and/or an abundance of woody debris) that provide refugia from predators (*e.g.*, nonnative fish or bullfrogs).

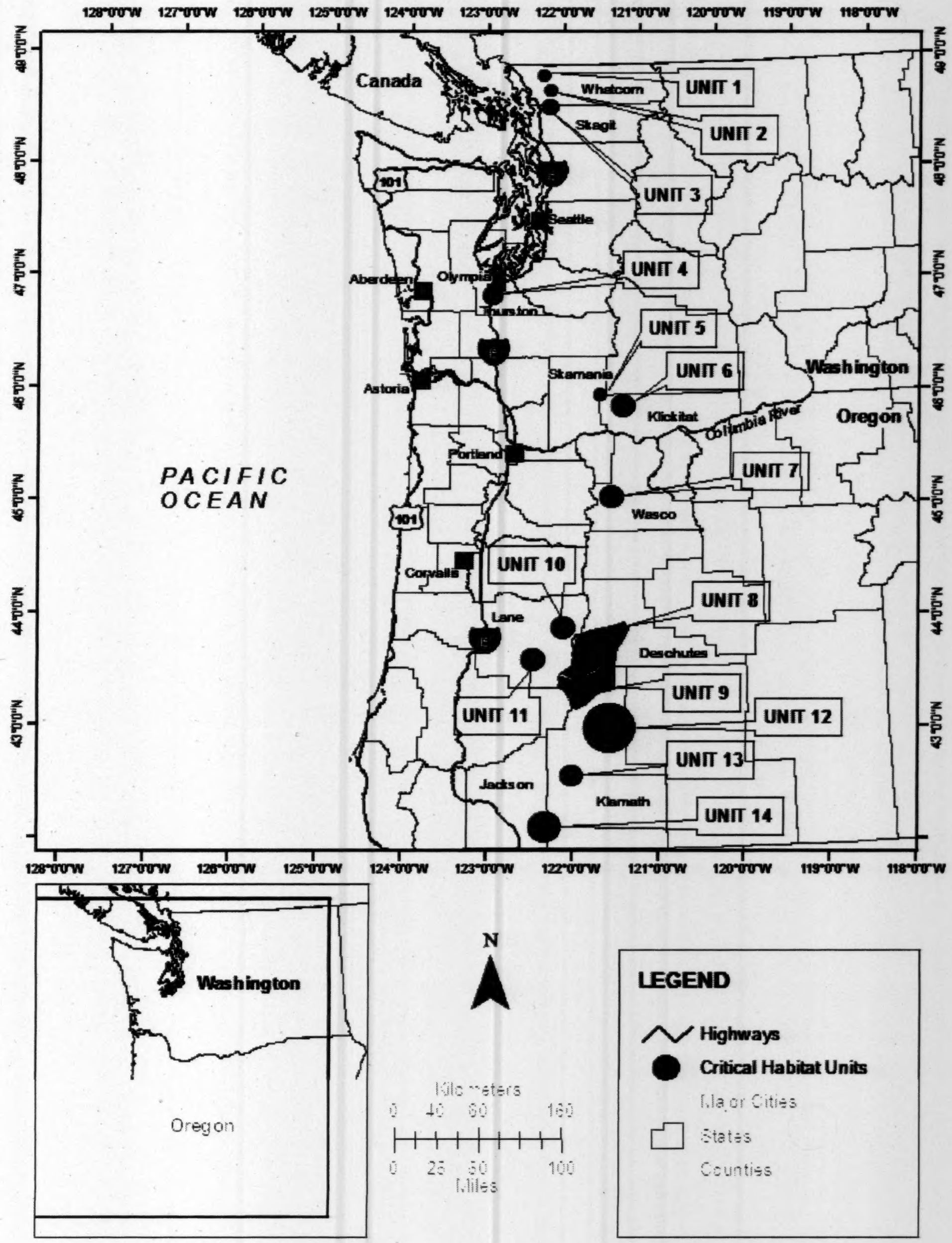
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on June 10, 2016.

(4) *Critical habitat map units.* Data layers defining map units were created from 2010–2013 aerial photography from USDA National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system program. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, (*http://www.fws.gov/wafwo*), *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0088, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

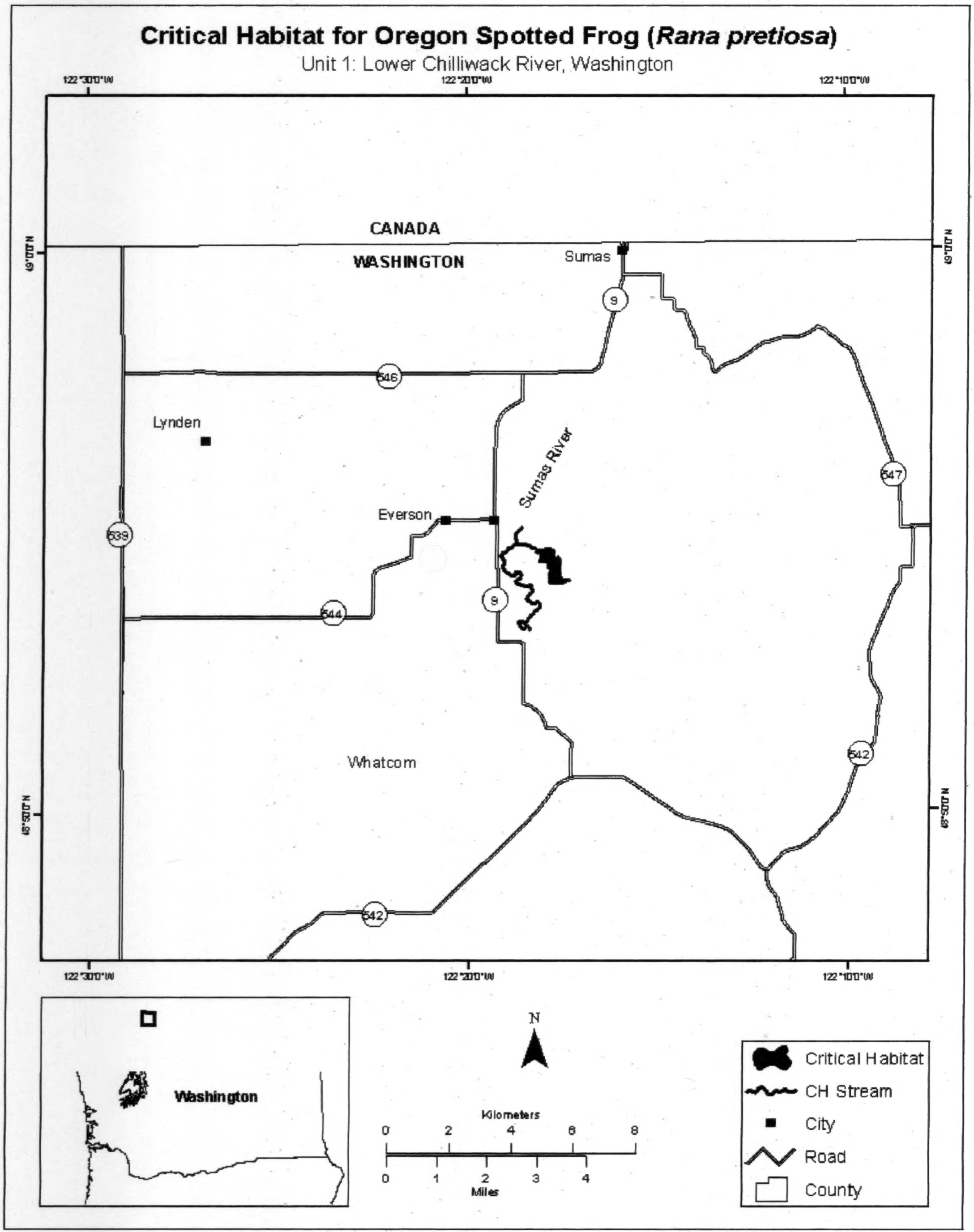
(5) **Note:** Index map follows:

BILLING CODE 4333–15–P

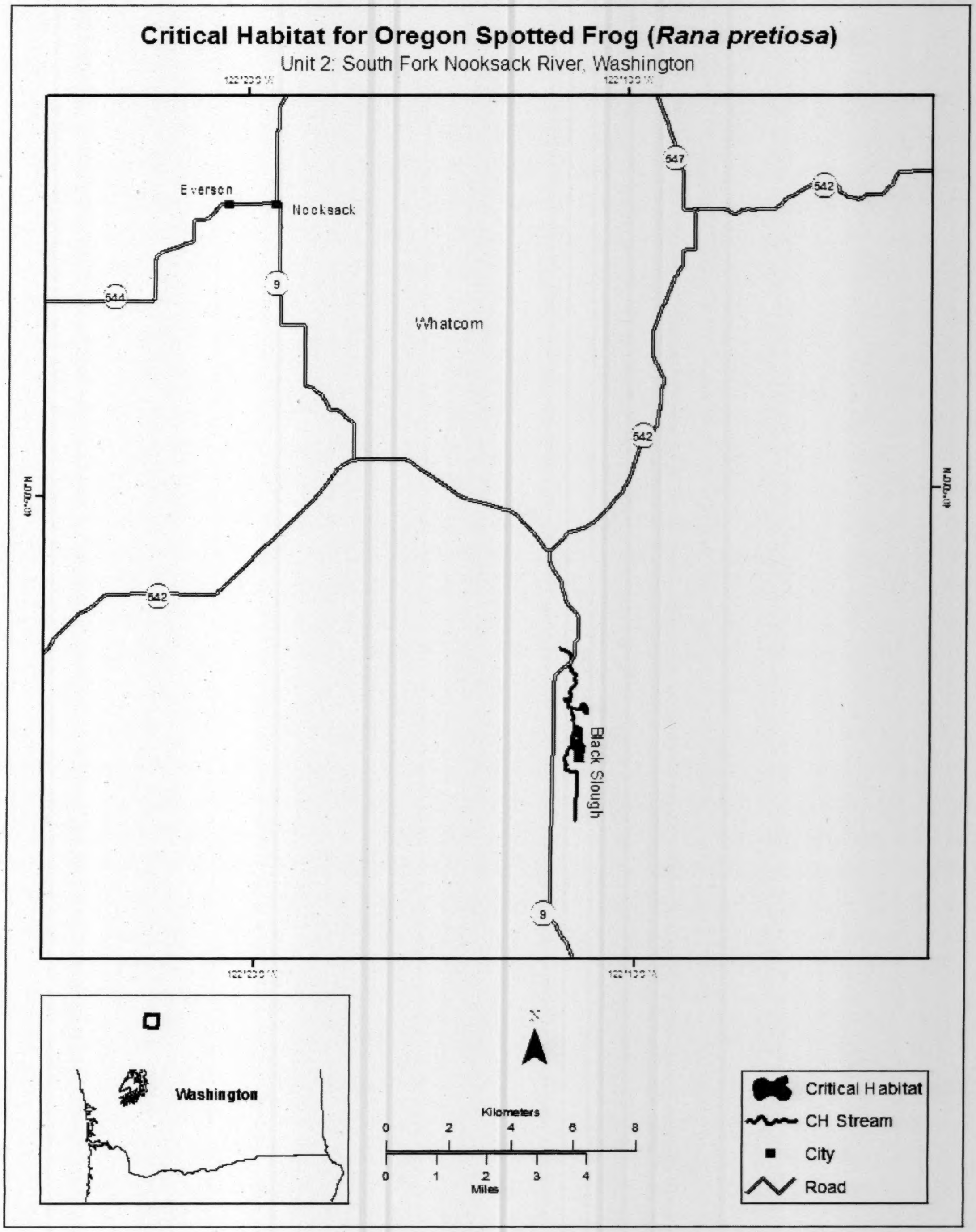
Critical Habitat for Oregon Spotted Frog in Washington and Oregon


128°0'0"W
127°0'0"W
126°0'0"W
125°0'0"W
124°0'0"W
123°0'0"W
122°0'0"W
121°0'0"W
120°0'0"W
119°0'0"W
118°0'0"W
49°0'0"N
48°0'0"N
47°0'0"N
46°0'0"N
45°0'0"N
44°0'0"N
43°0'0"N
Canada
Whatcom
Skagit
Seattle
Aberdeen
Olympia
Thurston
Astoria
Skamania
Klickitat
Columbia River
Washington
Oregon
Portland
Wasco
Corvallis
Lane
Deschutes
Jackson
Klamath
PACIFIC OCEAN
101
UNIT 1
UNIT 2
UNIT 3
UNIT 4
UNIT 5
UNIT 6
UNIT 7
UNIT 8
UNIT 9
UNIT 10
UNIT 11
UNIT 12
UNIT 13
UNIT 14
Washington
Oregon
N
Kilometers
0 40 80 160
0 25 50 100
Miles
LEGEND
Highways
Critical Habitat Units
Major Cities
States
Counties

(6) Unit 1: Lower Chilliwack River, Whatcom County, Washington. Map of Unit 1 follows:


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)
Unit 1: Lower Chilliwack River, Washington
122°30'0"W
122°20'0"W
122°10'0"W
49°0'0"N
48°50'0"N
CANADA
WASHINGTON
Sumas
9
546
Lynden
Sumas River
Everson
547
539
544
9
Whatcom
542
542
Washington
N
Kilometers
0 2 4 6 8
0 1 2 3 4
Miles
Critical Habitat
CH Stream
City
Road
County

(7) Unit 2: South Fork Nooksack River, Whatcom County, Washington. Map of Unit 2 follows:

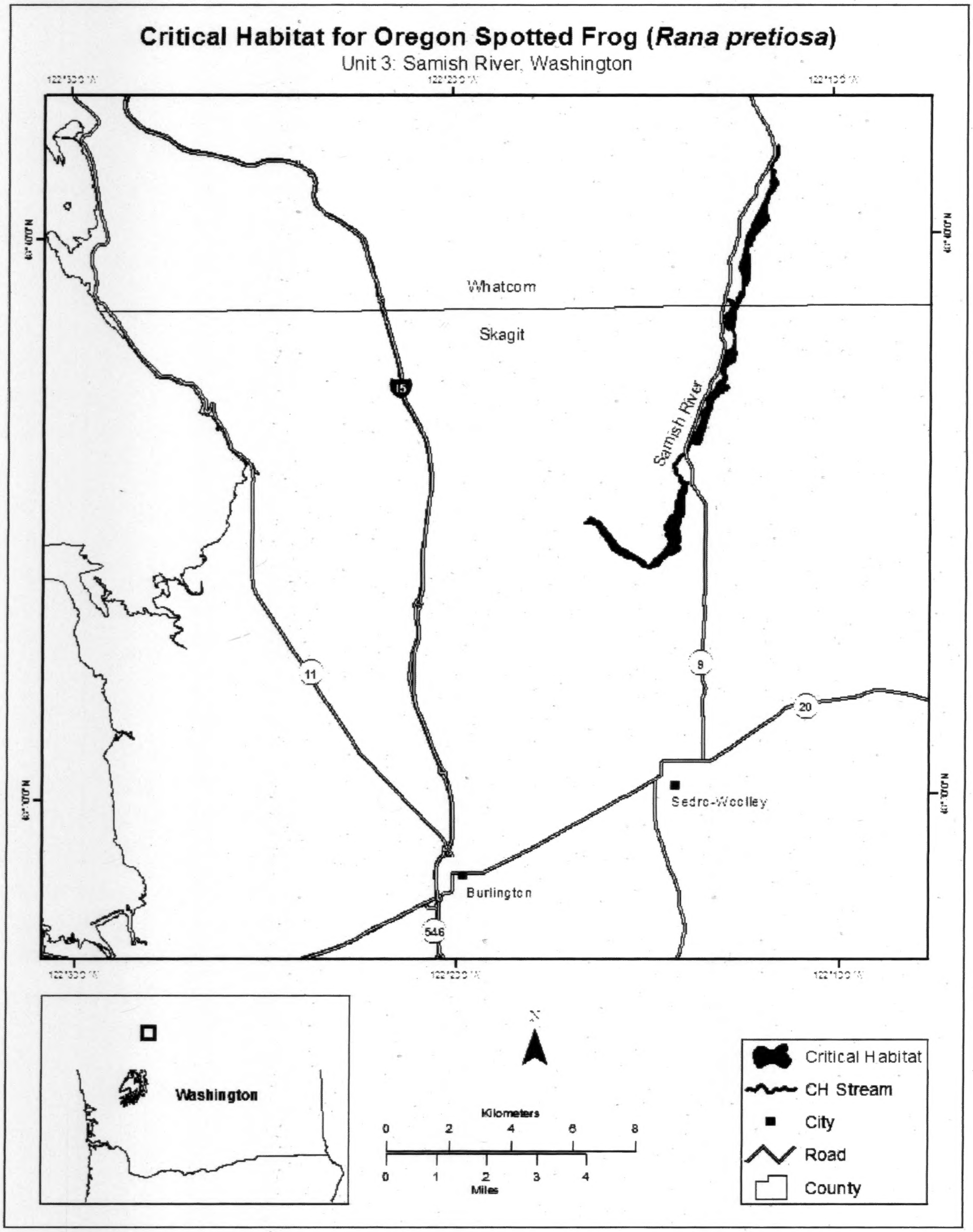


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)

Unit 2: South Fork Nooksack River, Washington

122°20'0"W
122°10'0"W
547
542
Everson
Nooksack
544
9
Whatcom
542
542
Black Slough
9
Washington
N
Kilometers
0
2
4
6
8
0
1
2
3
4
Miles
Critical Habitat
CH Stream
City
Road

(8) Unit 3: Samish River, Whatcom and Skagit Counties, Washington. Map of Unit 3 follows:

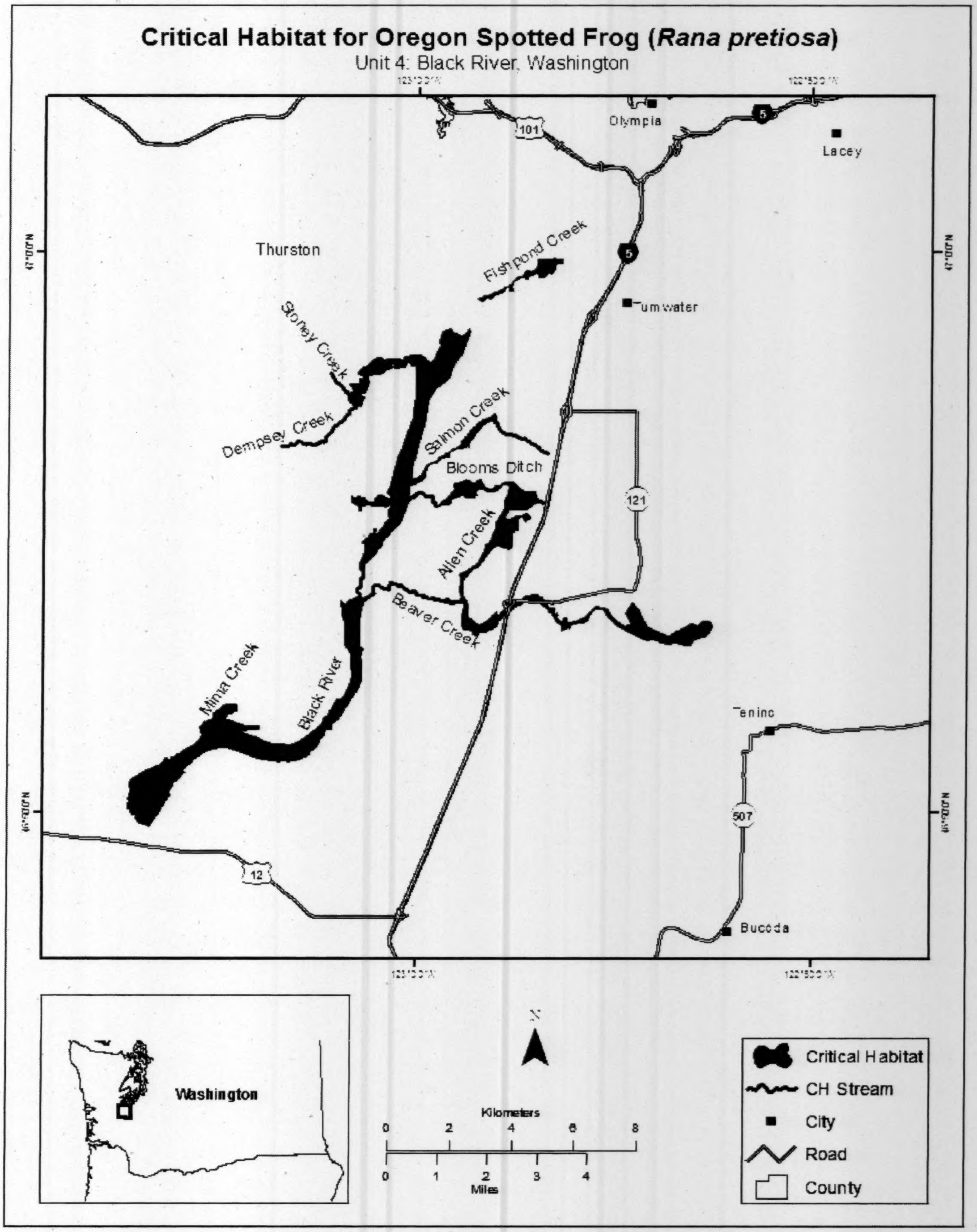


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)

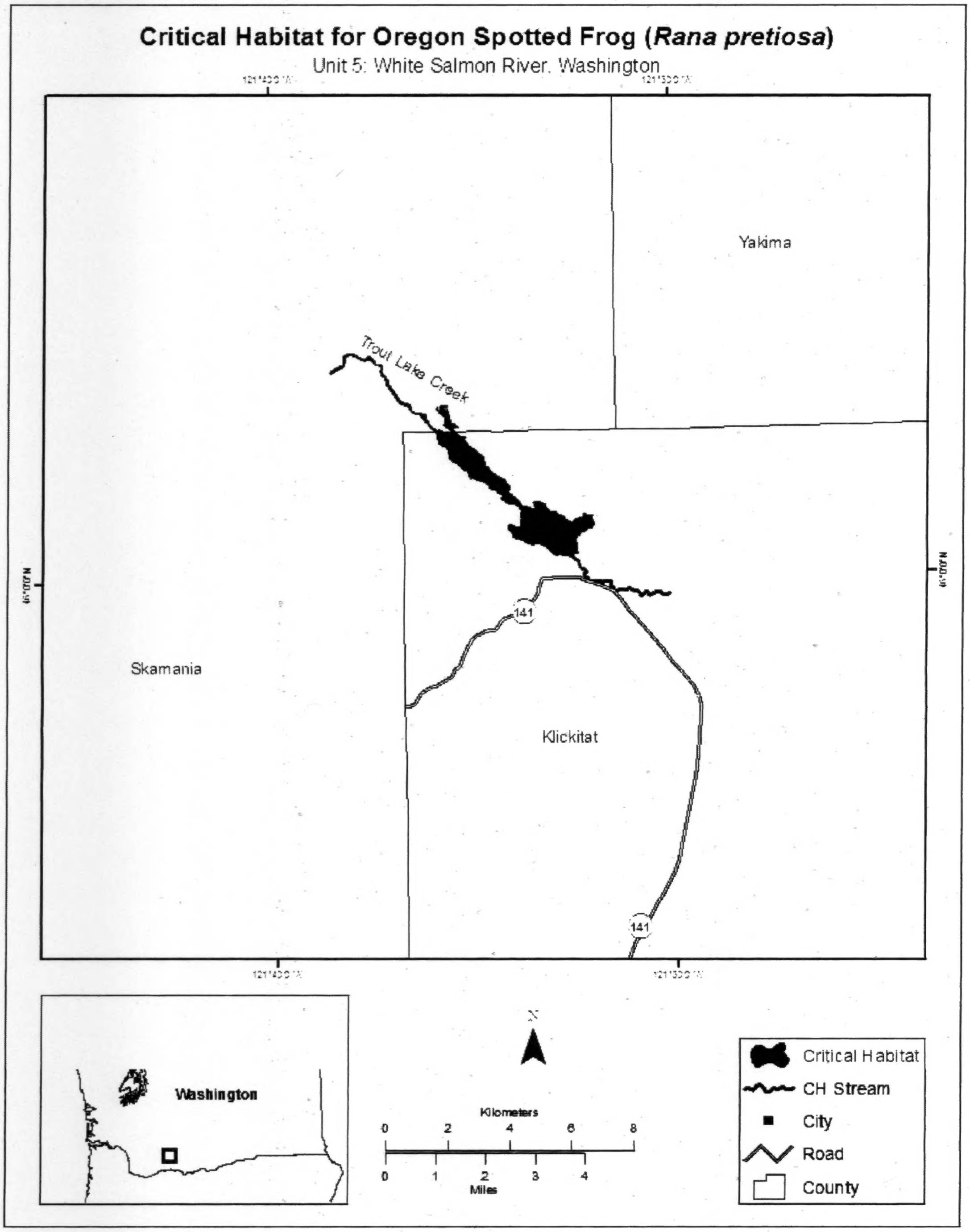
Unit 3: Samish River, Washington

122°30'0"W
122°20'0"W
122°10'0"W
48°40'0"N
48°30'0"N
Whatcom
Skagit
5
Samish River
11
9
20
Sedro-Woolley
Burlington
546
Washington
N
Kilometers
0
2
4
6
8
0
1
2
3
4
Miles
Critical Habitat
CH Stream
City
Road
County

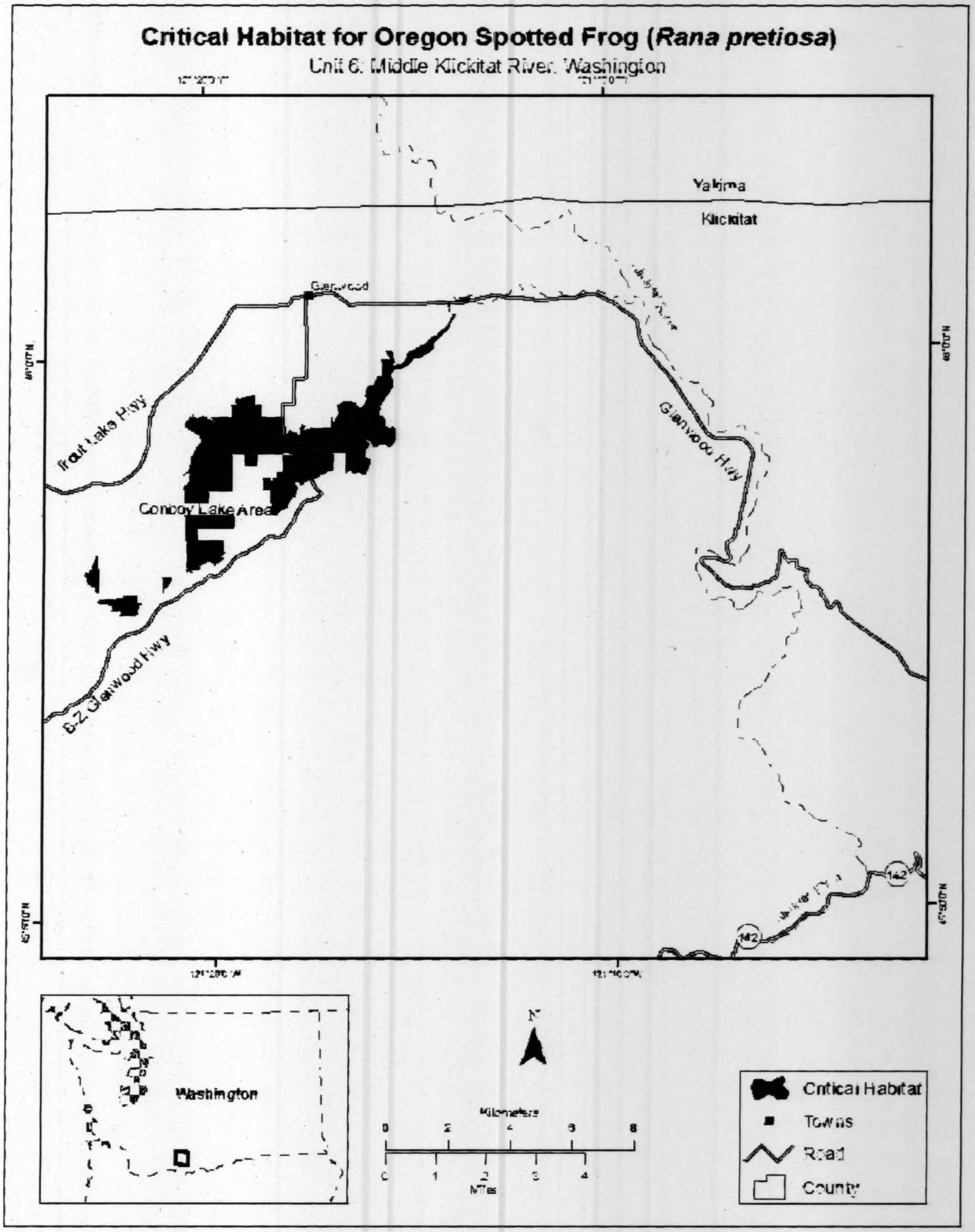
(9) Unit 4: Black River, Thurston County, Washington. Map of Unit 4 follows:


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)
Unit 4: Black River, Washington
123°0'0"W
122°50'0"W
47°0'0"N
46°50'0"N
Olympia
Lacey
101
5
Thurston
Fishpond Creek
Tumwater
Stoney Creek
Dempsey Creek
Salmon Creek
Blooms Ditch
121
Allen Creek
Beaver Creek
Mima Creek
Black River
Tenino
507
12
Bucoda
Washington
N
Kilometers
0 2 4 6 8
0 1 2 3 4
Miles
Critical Habitat
CH Stream
City
Road
County

(10) Unit 5: White Salmon River, Skamania and Klickitat Counties, Washington. Map of Unit 5 follows:


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)
Unit 5: White Salmon River, Washington
121°40'0"W
121°30'0"W
46°0'0"N
46°0'0"N
Yakima
Trout Lake Creek
141
Skamania
Klickitat
141
121°40'0"W
121°30'0"W
Washington
N
Kilometers
0
2
4
6
8
0
1
2
3
4
Miles
Critical Habitat
CH Stream
City
Road
County

(11) Unit 6: Middle Klickitat River, Klickitat County, Washington. Map of Unit 6 follows:

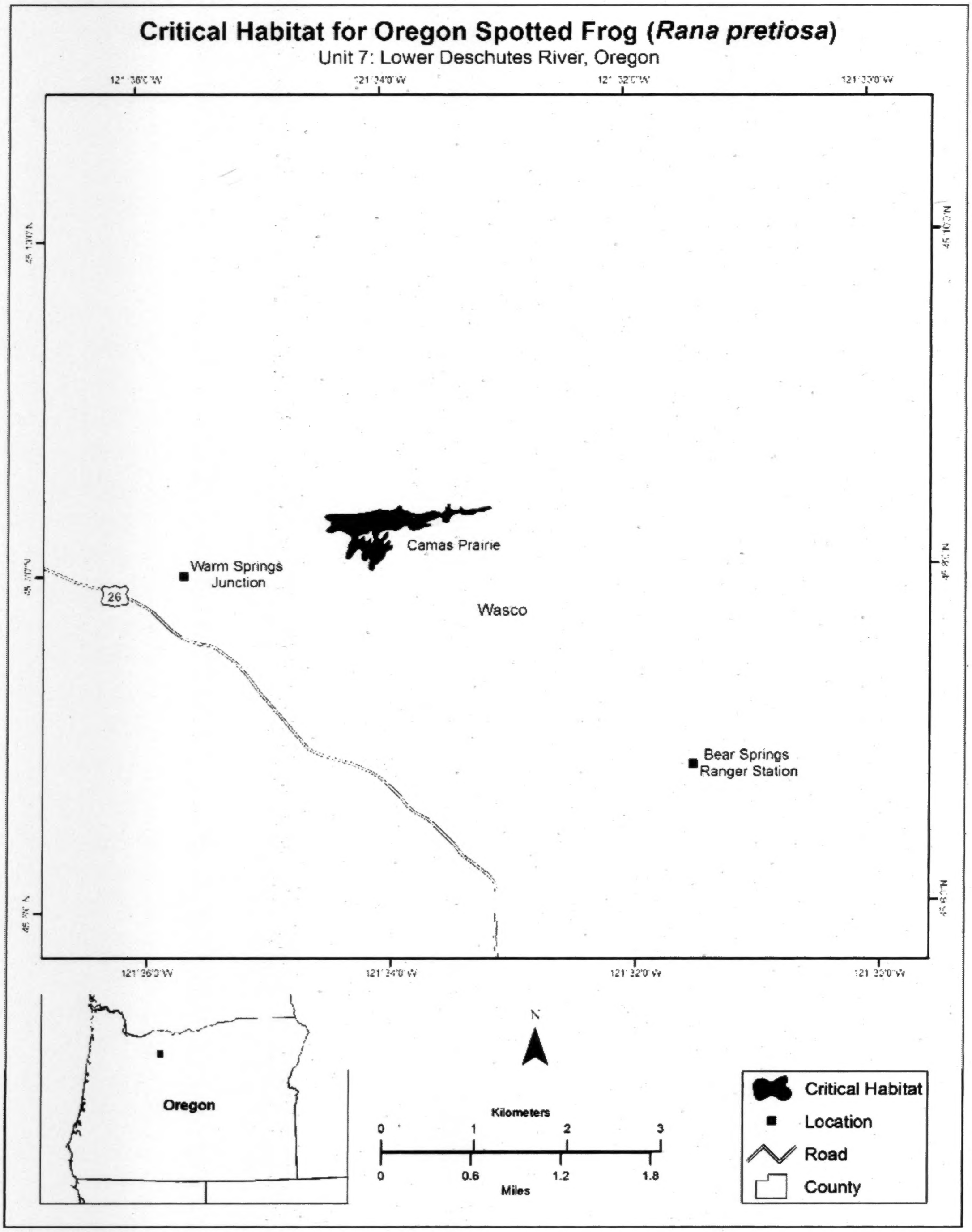


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)

Unit 6: Middle Klickitat River, Washington

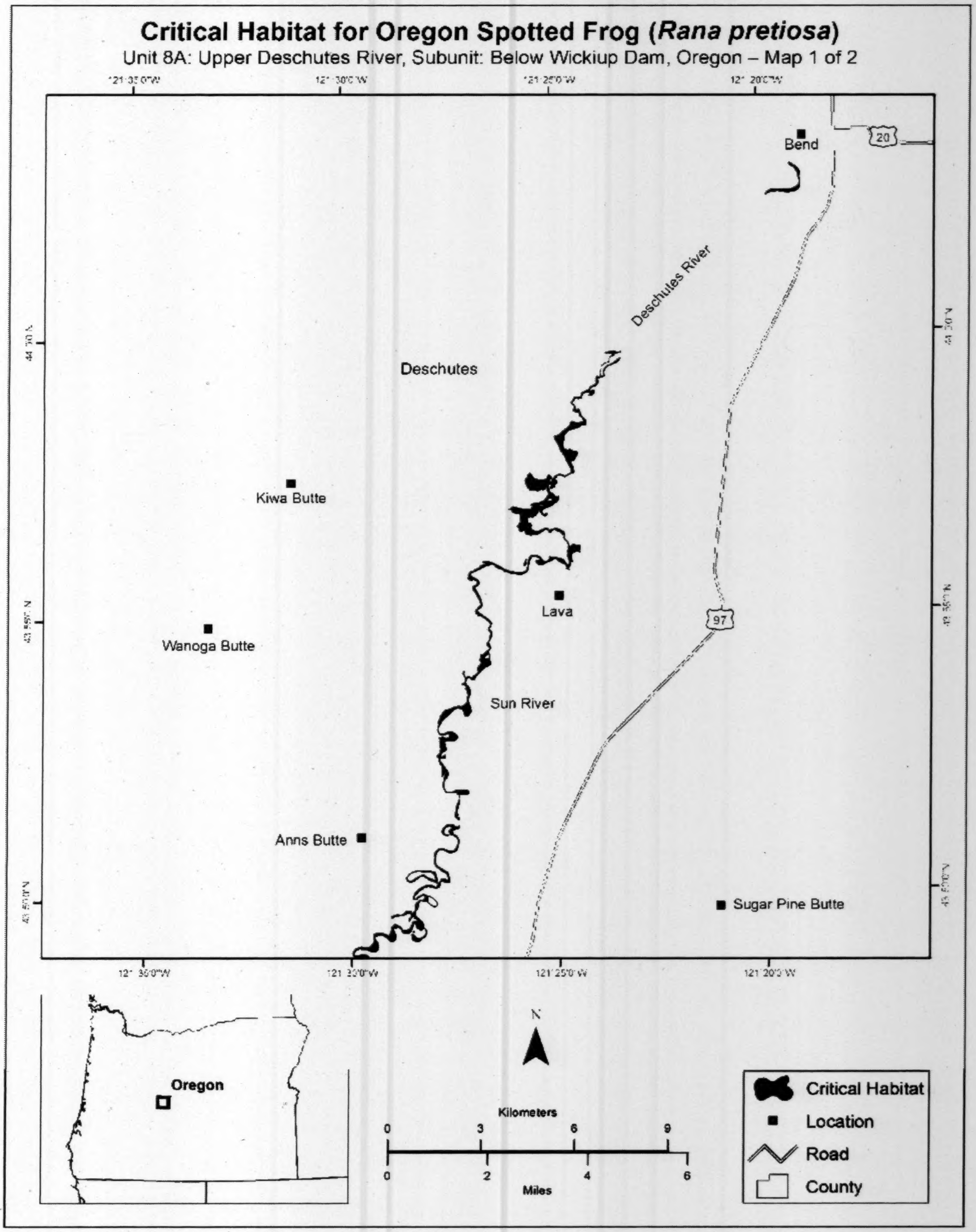
Yakima
Klickitat
Glenwood
Trout Lake Hwy
Glenwood Hwy
Conboy Lake Area
B-Z Glenwood Hwy
142
142
N
Washington
Kilometers
0
2
4
6
8
0
1
2
3
4
Miles
Critical Habitat
Towns
Road
County

(12) Unit 7: Lower Deschutes River, Wasco County, Oregon. Map of Unit 7 follows:


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)
Unit 7: Lower Deschutes River, Oregon
121°36'0"W
121°34'0"W
121°32'0"W
121°30'0"W
45°10'0"N
45°8'0"N
45°6'0"N
Camas Prairie
Warm Springs Junction
26
Wasco
Bear Springs Ranger Station
Oregon
N
Kilometers
0
1
2
3
0
0.6
1.2
1.8
Miles
Critical Habitat
Location
Road
County

(13) Unit 8A: Upper Deschutes River, Subunit: Below Wickiup Dam, Oregon.

(i) Map 1 of 2, Upper Deschutes River, Below Wickiup Dam, Deschutes County, Oregon. Map 1 of 2 of Unit 8A follows:

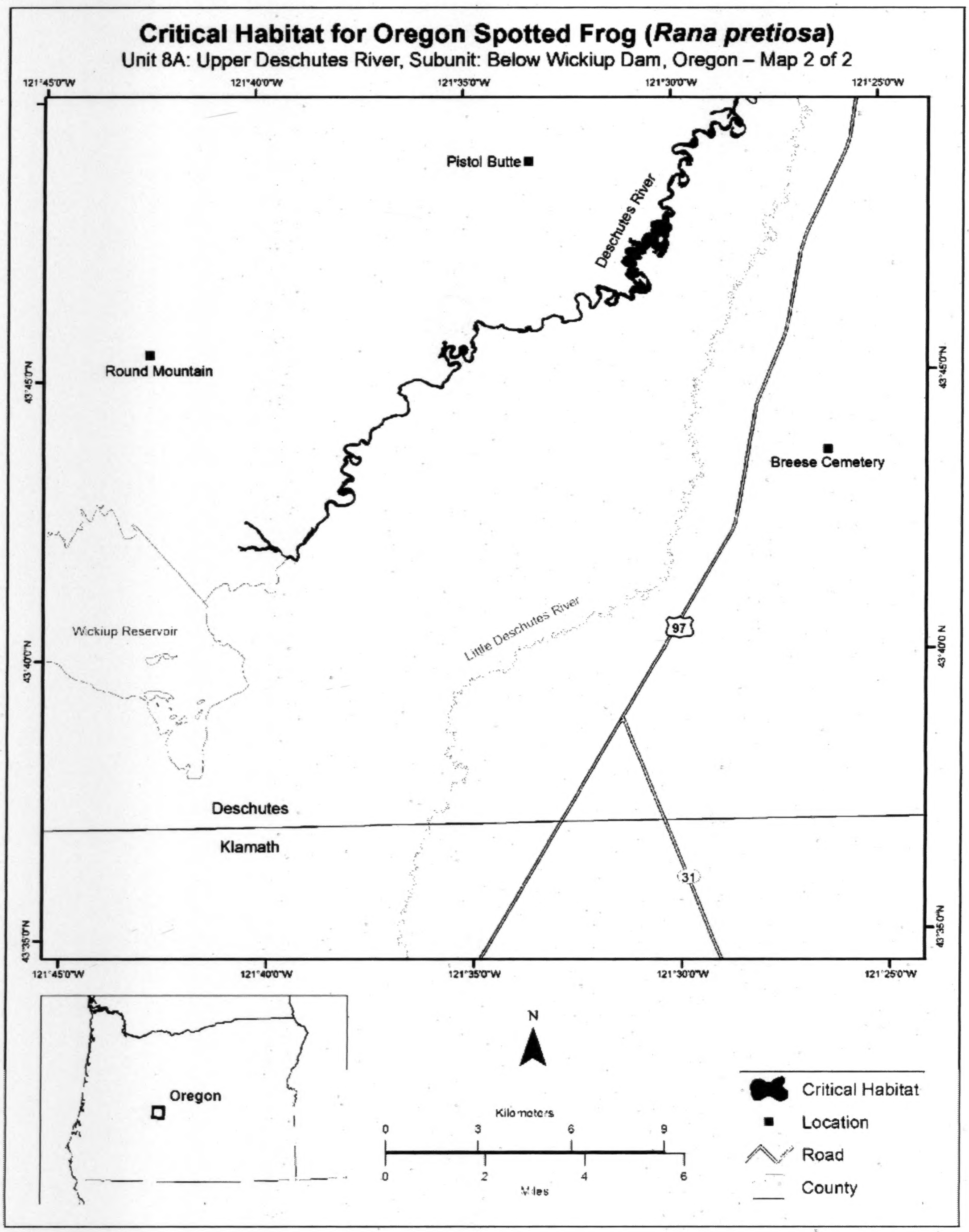


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)

Unit 8A: Upper Deschutes River, Subunit: Below Wickiup Dam, Oregon – Map 1 of 2

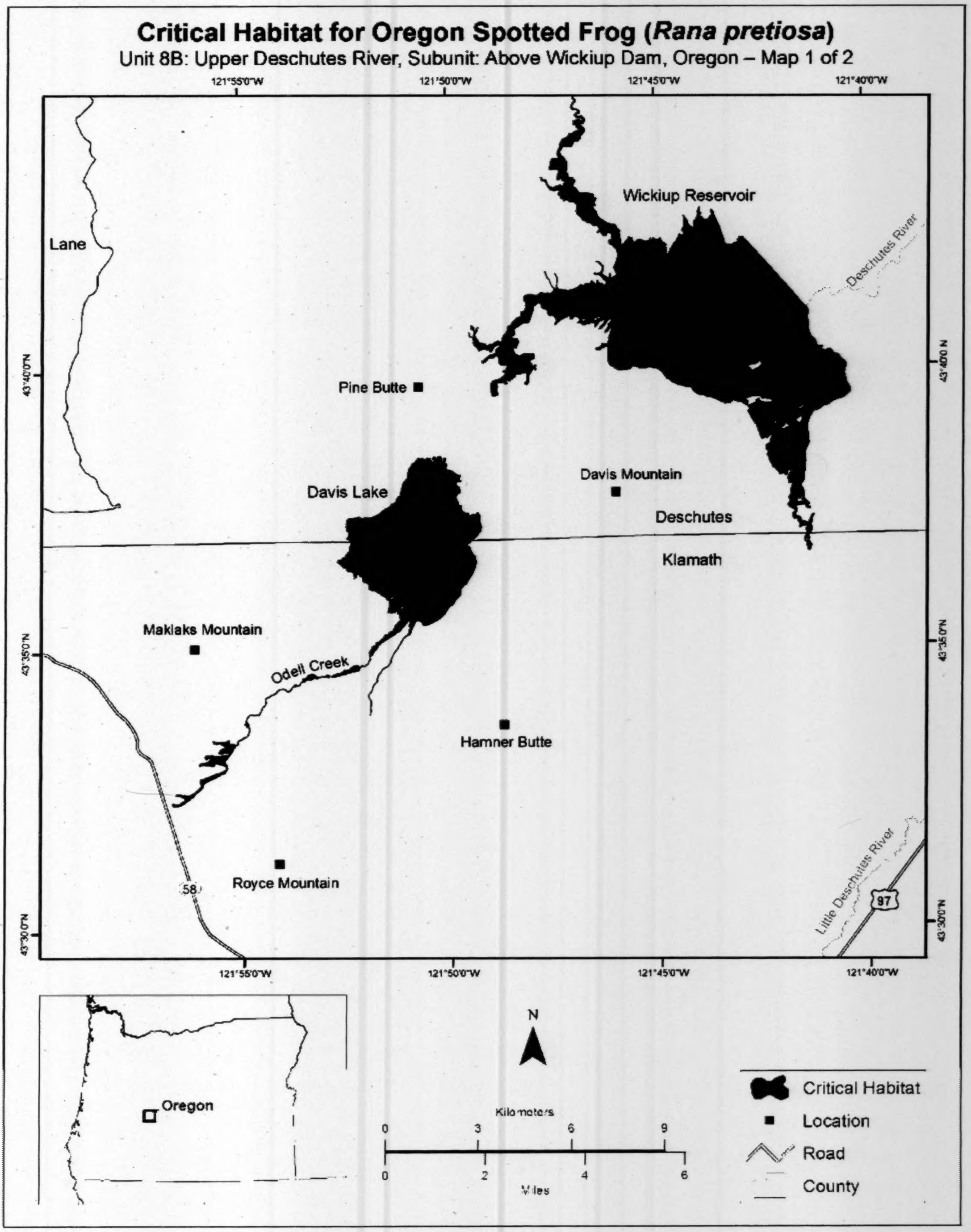
121°35'0"W
121°30'0"W
121°25'0"W
121°20'0"W
44°0'0"N
43°55'0"N
43°50'0"N
Bend
20
Deschutes River
Deschutes
Kiwa Butte
Lava
97
Wanoga Butte
Sun River
Anns Butte
Sugar Pine Butte
N
Oregon
Kilometers
0
3
6
9
0
2
4
6
Miles
Critical Habitat
Location
Road
County

(ii) Map 2 of 2, Upper Deschutes River, Below Wickiup Dam, Deschutes County, Oregon. Map 2 of 2 of Unit 8A follows:

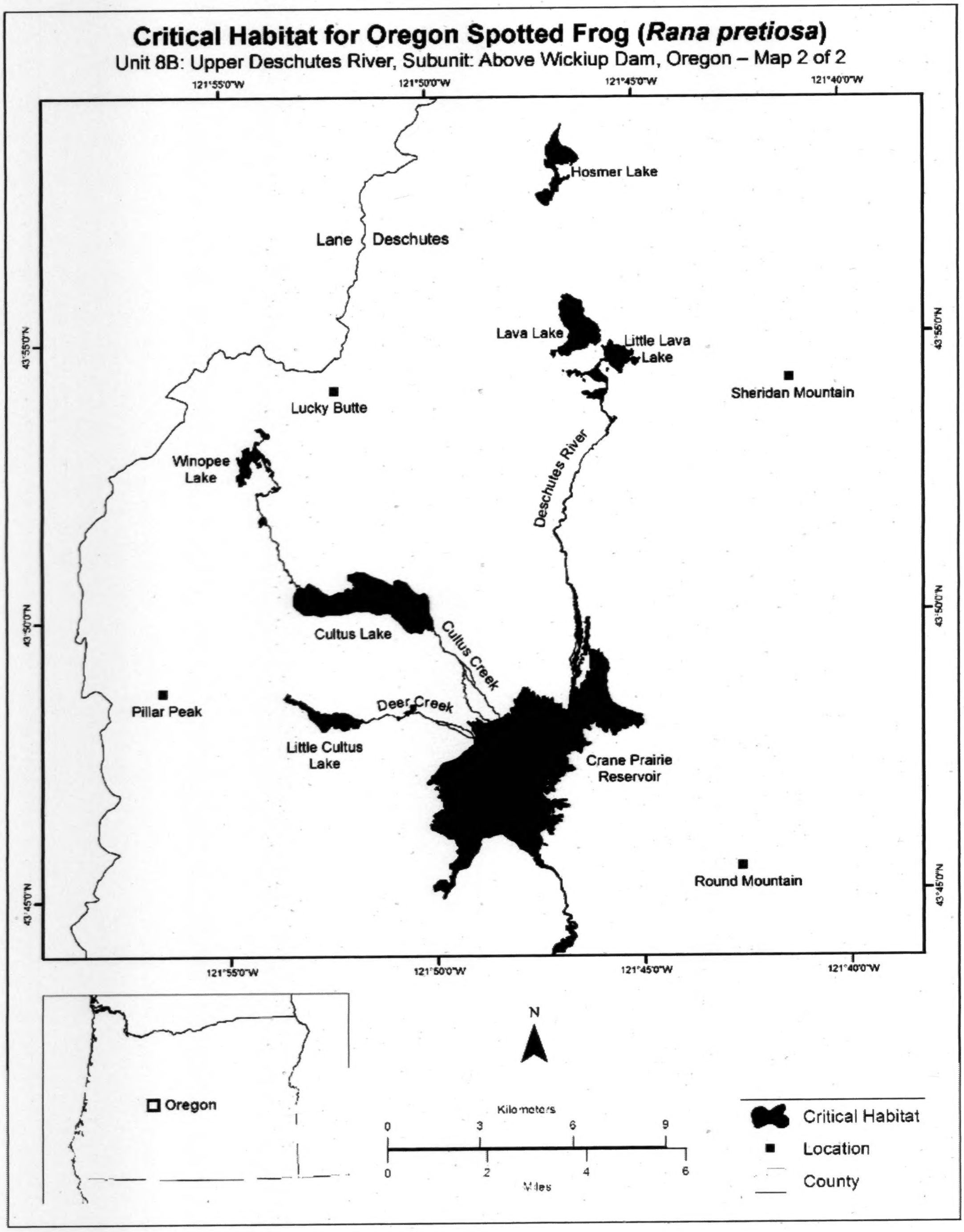

Critical Habitat for Oregon Spotted Frog (Rana pretiosa)
Unit 8A: Upper Deschutes River, Subunit: Below Wickiup Dam, Oregon – Map 2 of 2
121°45'0"W
121°40'0"W
121°35'0"W
121°30'0"W
121°25'0"W
43°45'0"N
43°40'0"N
43°35'0"N
Pistol Butte
Deschutes River
Round Mountain
Breese Cemetery
Wickiup Reservoir
Little Deschutes River
97
Deschutes
Klamath
31
Oregon
N
Kilometers
0
3
6
9
0
2
4
6
Miles
Critical Habitat
Location
Road
County

(14) Unit 8B: Upper Deschutes River, Subunit: Above Wickiup Dam, Oregon.

(i) Map 1 of 2, Upper Deschutes River, Above Wickiup Dam, Deschutes and Klamath Counties, Oregon. Map 1 of 2 of Unit 8B follows:


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)
Unit 8B: Upper Deschutes River, Subunit: Above Wickiup Dam, Oregon – Map 1 of 2
121°55'0"W
121°50'0"W
121°45'0"W
121°40'0"W
43°40'0"N
43°35'0"N
43°30'0"N
Wickiup Reservoir
Deschutes River
Lane
Pine Butte
Davis Lake
Davis Mountain
Deschutes
Klamath
Maklaks Mountain
Odell Creek
Hamner Butte
Royce Mountain
58
Little Deschutes River
97
Oregon
N
Kilometers
0
3
6
9
0
2
4
6
Miles
Critical Habitat
Location
Road
County

(ii) Map 2 of 2, Upper Deschutes River, Above Wickiup Dam, Deschutes and Klamath Counties, Oregon. Map 2 of 2 of Unit 8B follows:



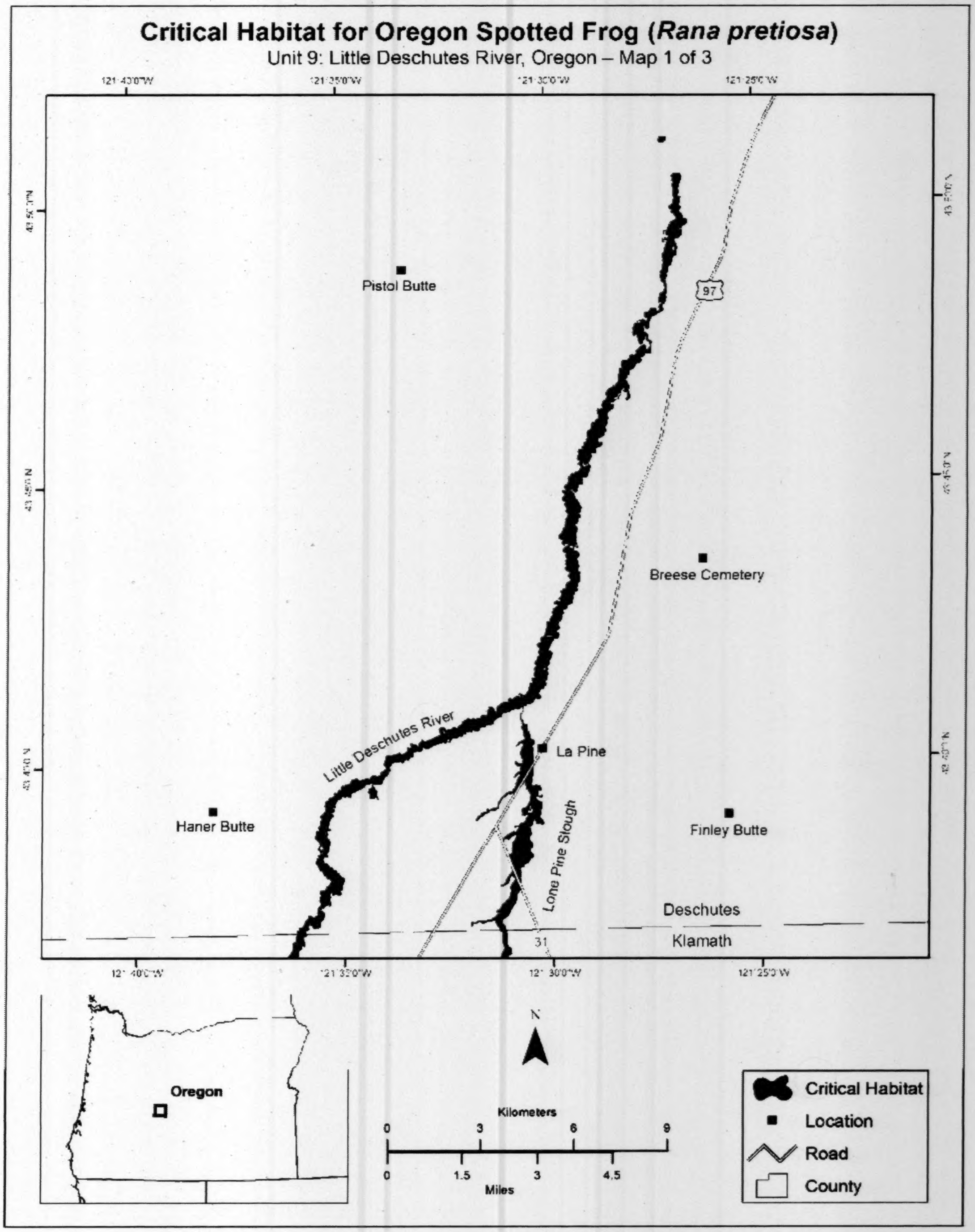
Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)

Unit 8B: Upper Deschutes River, Subunit: Above Wickiup Dam, Oregon – Map 2 of 2

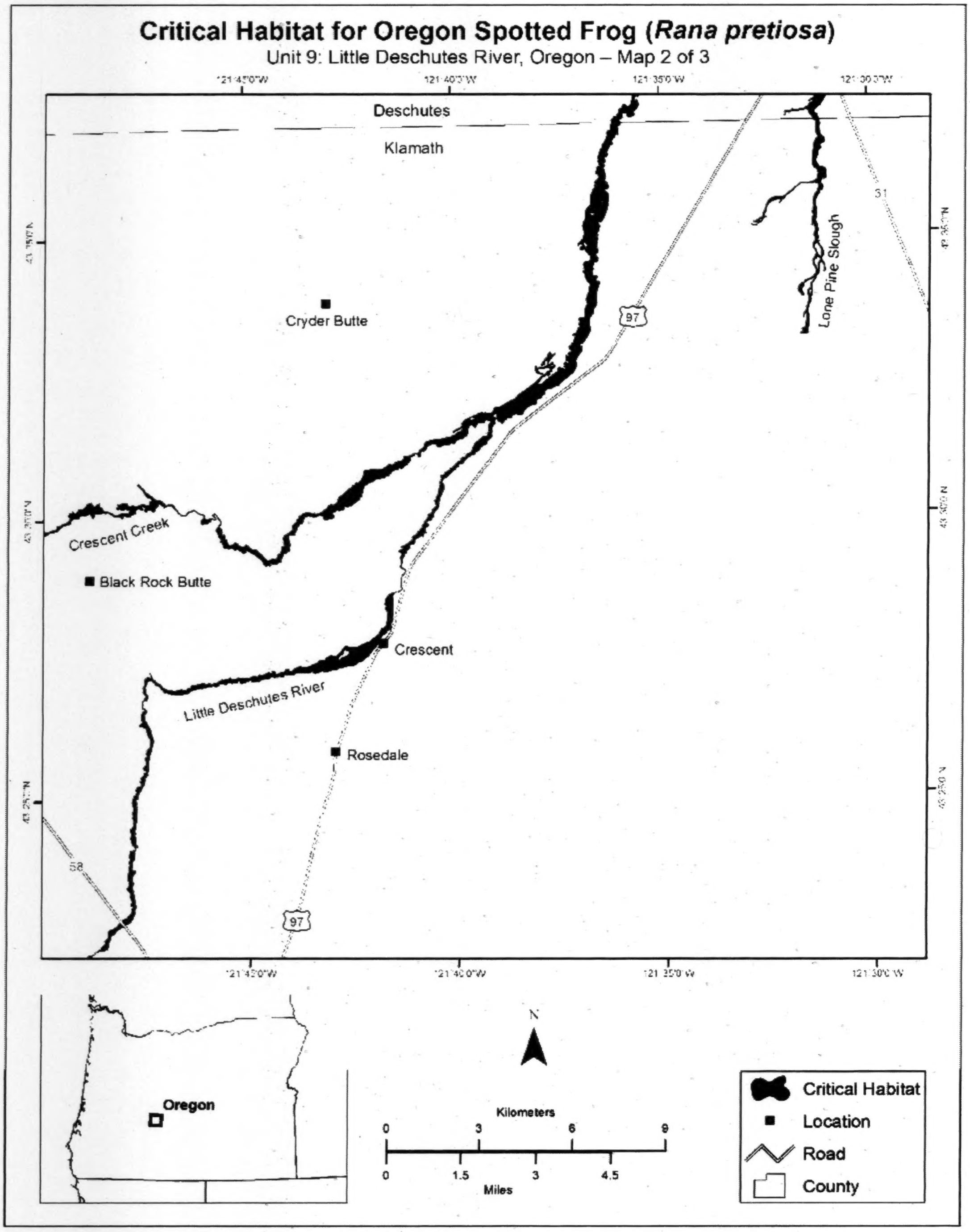
121°55'0"W
121°50'0"W
121°45'0"W
121°40'0"W
43°55'0"N
43°50'0"N
43°45'0"N
Hosmer Lake
Lane
Deschutes
Lava Lake
Little Lava Lake
Sheridan Mountain
Lucky Butte
Winopee Lake
Deschutes River
Cultus Lake
Cultus Creek
Pillar Peak
Deer Creek
Little Cultus Lake
Crane Prairie Reservoir
Round Mountain
Oregon
N
Kilometers
0
3
6
9
0
2
4
6
Miles
Critical Habitat
Location
County

(15) Unit 9: Little Deschutes River, Deschutes and Klamath Counties, Oregon.

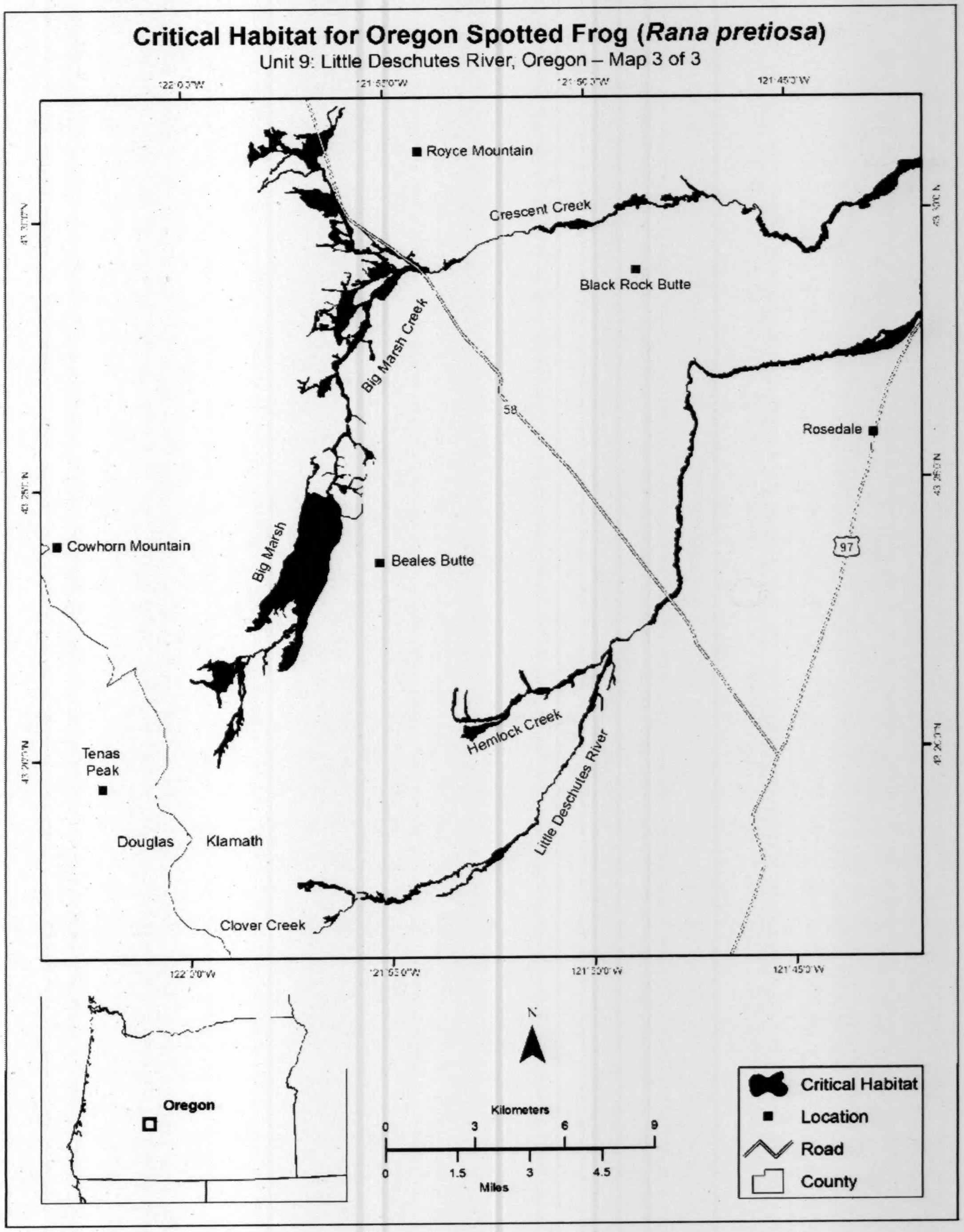
(i) Map 1 of 3, Little Deschutes River, Deschutes and Klamath Counties, Oregon. Map 1 of 3 of Unit 9 follows:


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)
Unit 9: Little Deschutes River, Oregon – Map 1 of 3
121°40'0"W
121°35'0"W
121°30'0"W
121°25'0"W
43°50'0"N
43°45'0"N
43°40'0"N
Pistol Butte
97
Breese Cemetery
Little Deschutes River
La Pine
Haner Butte
Lone Pine Slough
Finley Butte
Deschutes
Klamath
31
Oregon
N
Kilometers
0
3
6
9
0
1.5
3
4.5
Miles
Critical Habitat
Location
Road
County

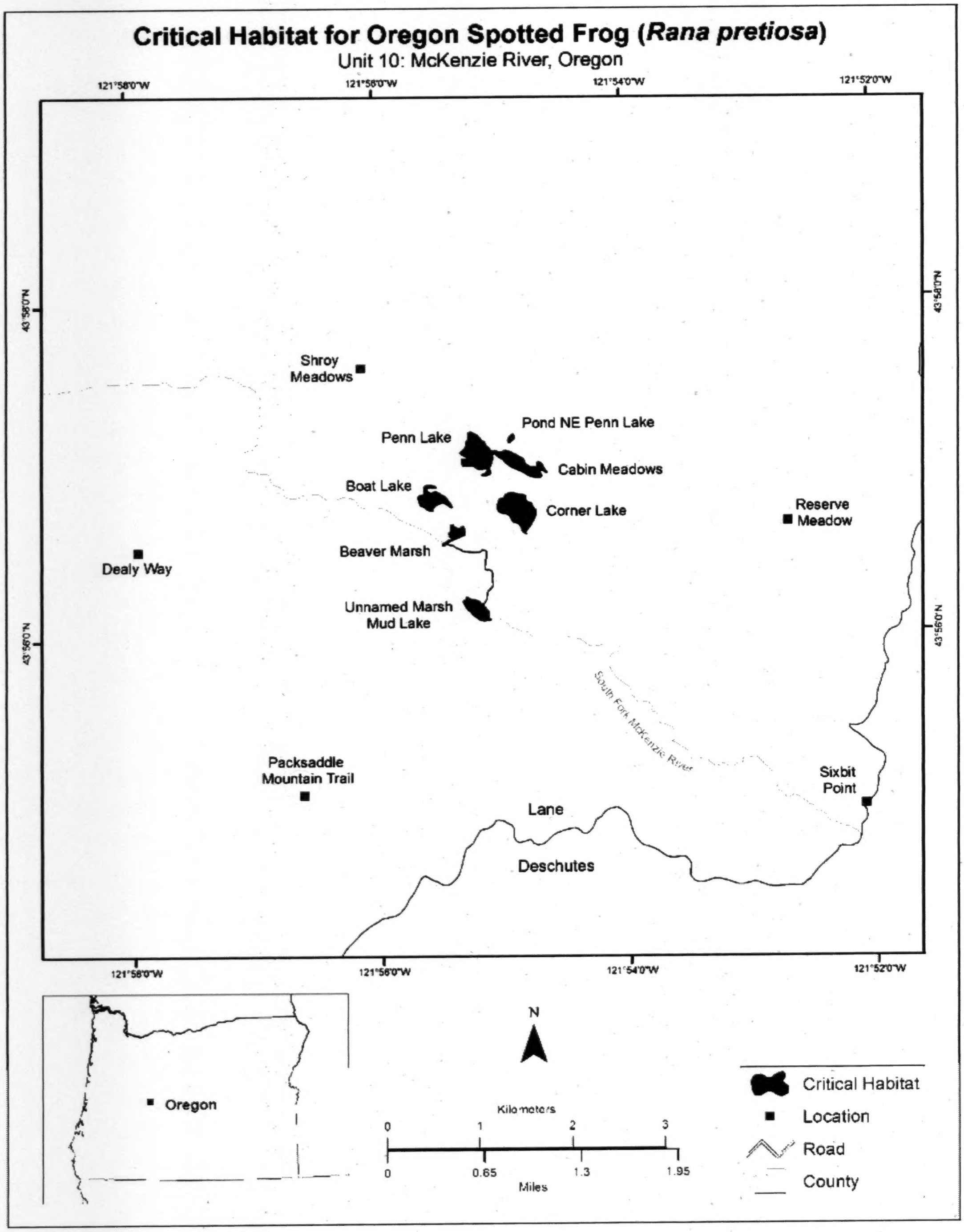
(ii) Map 2 of 3, Little Deschutes River, Deschutes and Klamath Counties, Oregon. Map 2 of 3 of Unit 9 follows:


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)
Unit 9: Little Deschutes River, Oregon – Map 2 of 3
121°45'0"W
121°40'0"W
121°35'0"W
121°30'0"W
43°35'0"N
43°30'0"N
43°25'0"N
Deschutes
Klamath
31
Lone Pine Slough
Cryder Butte
97
Crescent Creek
Black Rock Butte
Crescent
Little Deschutes River
Rosedale
58
97
Oregon
N
Kilometers
0
3
6
9
0
1.5
3
4.5
Miles
Critical Habitat
Location
Road
County

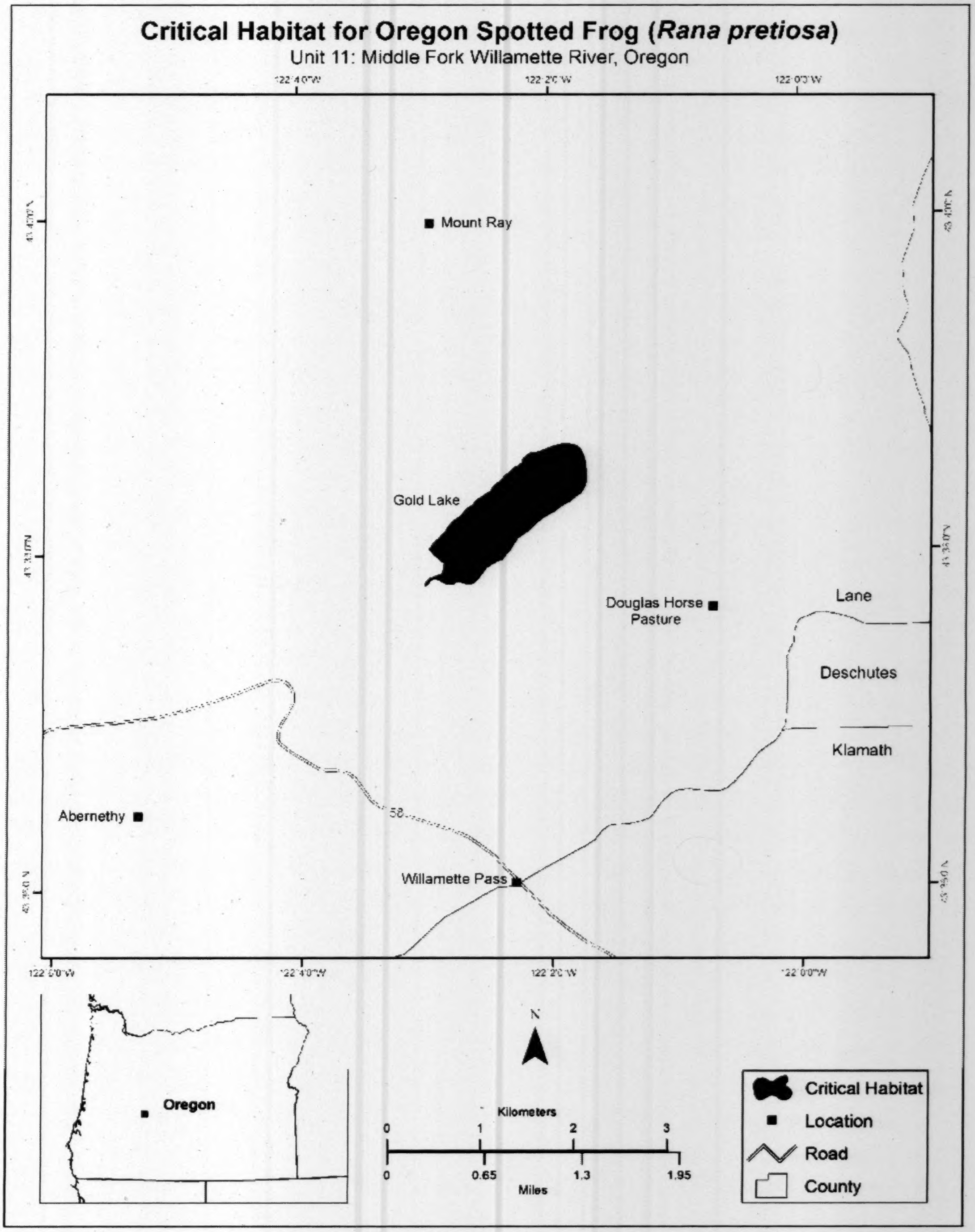
(iii) Map 3 of 3, Little Deschutes River, Deschutes and Klamath Counties, Oregon. Map 3 of 3 of Unit 9 follows:


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)
Unit 9: Little Deschutes River, Oregon – Map 3 of 3
122°0'0"W
121°55'0"W
121°50'0"W
121°45'0"W
43°30'0"N
43°25'0"N
43°20'0"N
Royce Mountain
Crescent Creek
Black Rock Butte
Big Marsh Creek
58
Rosedale
Cowhorn Mountain
Big Marsh
Beales Butte
97
Hemlock Creek
Little Deschutes River
Tenas Peak
Douglas
Klamath
Clover Creek
Oregon
N
Kilometers
0
3
6
9
0
1.5
3
4.5
Miles
Critical Habitat
Location
Road
County

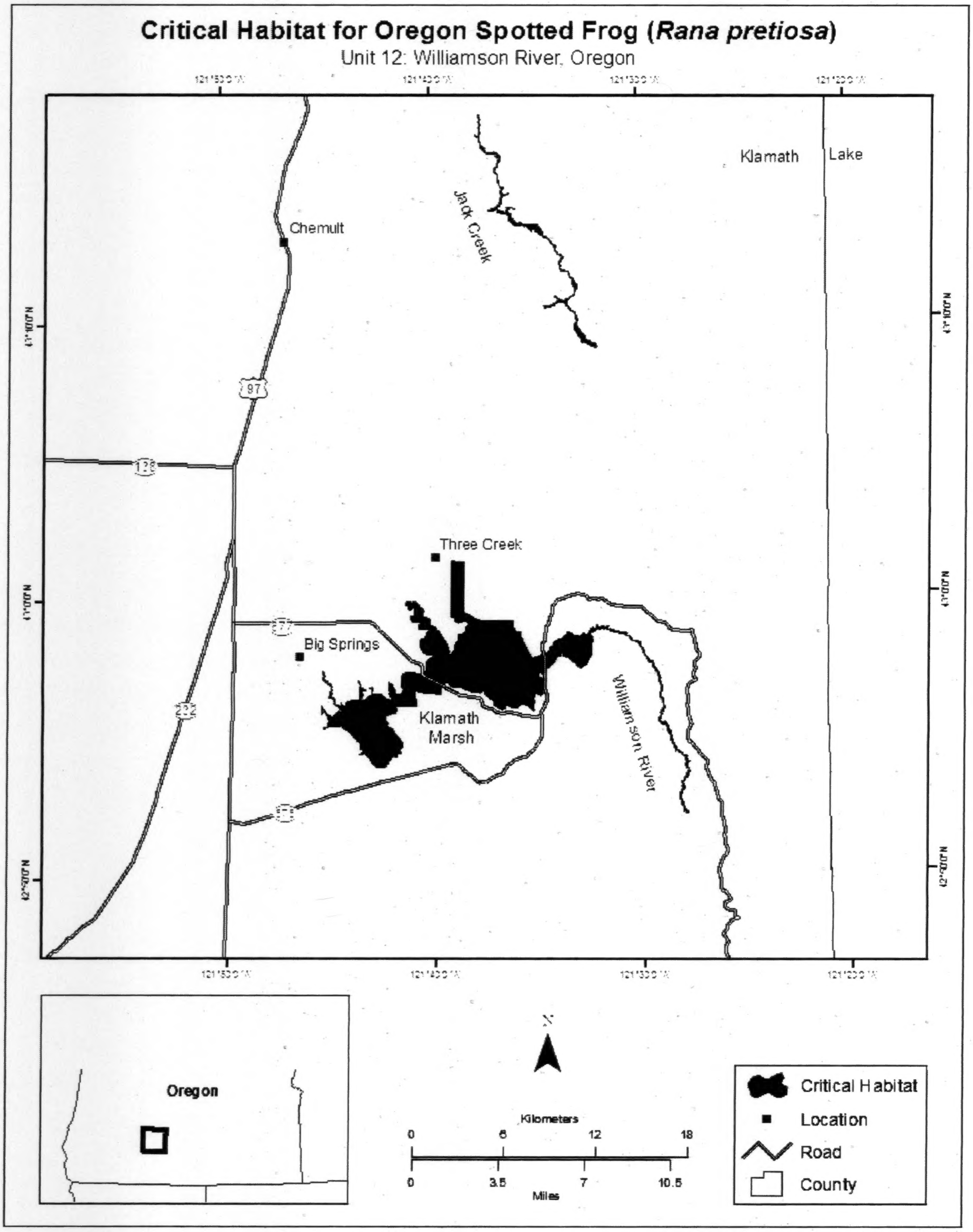
(16) Unit 10: McKenzie River, Lane County, Oregon. Map of Unit 10 follows:


Critical Habitat for Oregon Spotted Frog (Rana pretiosa)
Unit 10: McKenzie River, Oregon
121°58'0"W
121°56'0"W
121°54'0"W
121°52'0"W
43°58'0"N
43°56'0"N
Shroy Meadows
Pond NE Penn Lake
Penn Lake
Cabin Meadows
Boat Lake
Corner Lake
Reserve Meadow
Beaver Marsh
Dealy Way
Unnamed Marsh Mud Lake
South Fork McKenzie River
Packsaddle Mountain Trail
Sixbit Point
Lane
Deschutes
Oregon
N
Kilometers
0
1
2
3
0
0.65
1.3
1.95
Miles
Critical Habitat
Location
Road
County

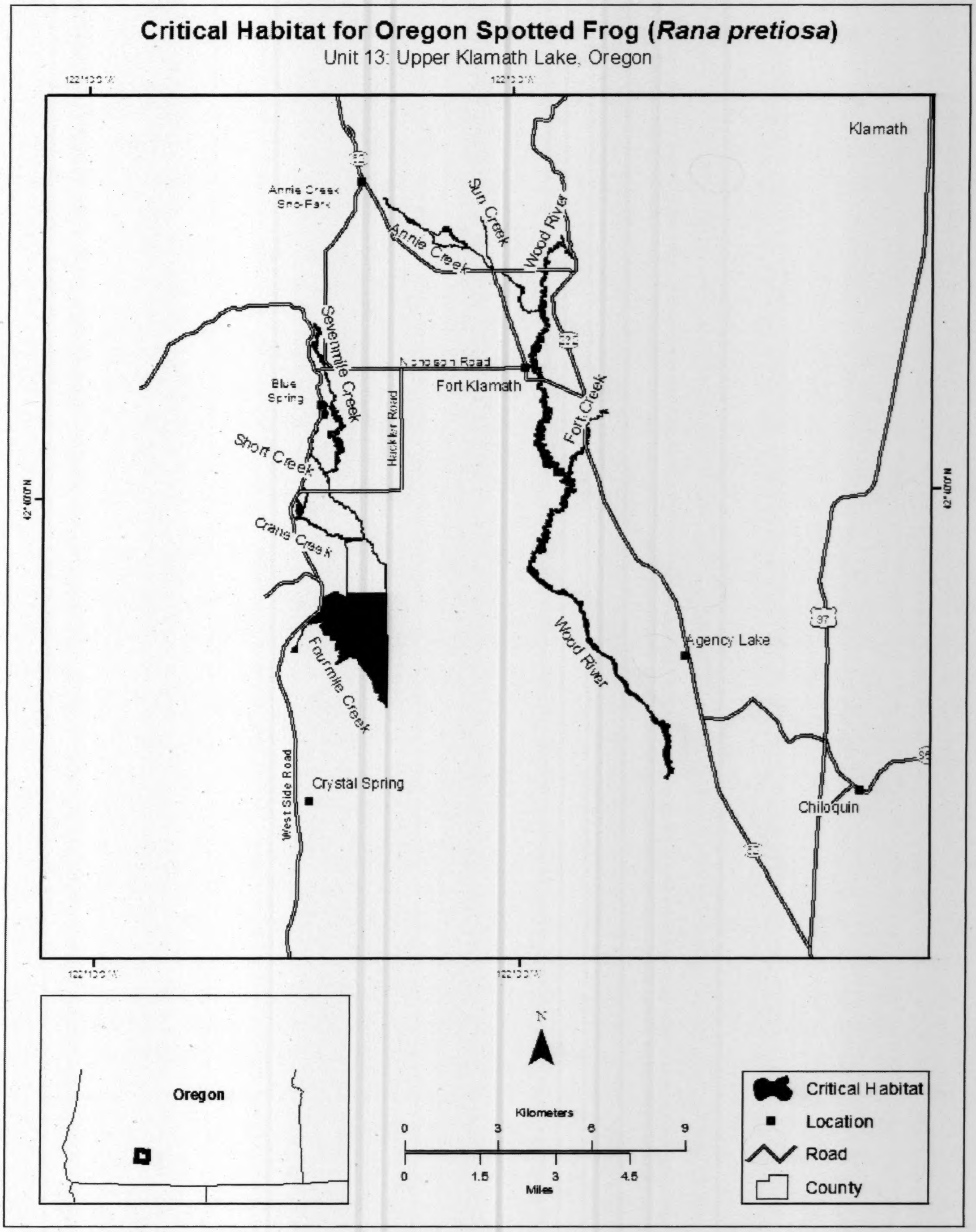
(17) Unit 11: Middle Fork Willamette River, Lane County, Oregon. Map of Unit 11 follows:


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)
Unit 11: Middle Fork Willamette River, Oregon
122°4'0"W
122°2'0"W
122°0'0"W
43°40'0"N
43°38'0"N
43°36'0"N
Mount Ray
Gold Lake
Douglas Horse Pasture
Lane
Deschutes
Klamath
Abernethy
58
Willamette Pass
Oregon
N
Kilometers
0
1
2
3
0
0.65
1.3
1.95
Miles
Critical Habitat
Location
Road
County

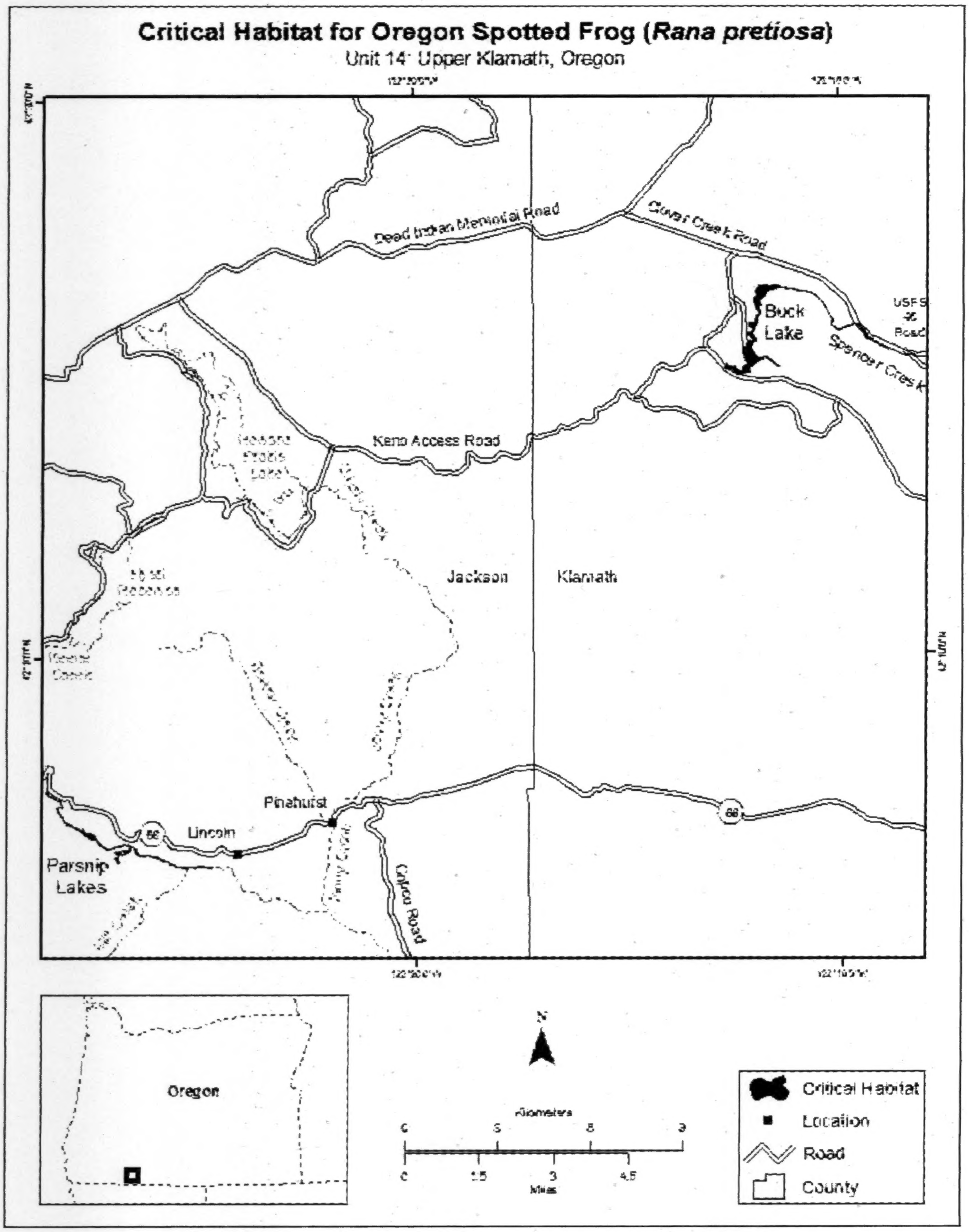
(18) Unit 12: Williamson River, Klamath County, Oregon. Map of Unit 12 follows:


Critical Habitat for Oregon Spotted Frog (*Rana pretiosa*)
Unit 12: Williamson River, Oregon
Klamath
Lake
Jack Creek
Chemult
97
138
Three Creek
Big Springs
Klamath
Marsh
Williamson River
Oregon
N
Kilometers
0
6
12
18
0
3.5
7
10.5
Miles
Critical Habitat
Location
Road
County

(19) Unit 13: Upper Klamath Lake, Klamath County, Oregon. Map of Unit 13 follows:


Critical Habitat for Oregon Spotted Frog (Rana pretiosa)
Unit 13: Upper Klamath Lake, Oregon
122°10'0"W
122°0'0"W
42°40'0"N
Klamath
Annie Creek Sno-Park
Sun Creek
Wood River
Annie Creek
Sevenmile Creek
Nicholson Road
Fort Klamath
Blue Spring
Hackler Road
Fort Creek
Short Creek
Crane Creek
Fourmile Creek
Wood River
Agency Lake
97
Chiloquin
Crystal Spring
West Side Road
Oregon
N
Kilometers
0
3
6
9
0
1.5
3
4.5
Miles
Critical Habitat
Location
Road
County

(20) Unit 14: Upper Klamath, Jackson and Klamath Counties, Oregon. Map of Unit 14 follows:


Critical Habitat for Oregon Spotted Frog (Rana pretiosa)
Unit 14: Upper Klamath, Oregon
Dead Indian Memorial Road
Clover Creek Road
Buck Lake
USFS 46 Road
Spencer Creek
Keno Access Road
Jackson
Klamath
Pinehurst
Lincoln
Parsnip Lakes
Copco Road
66
Oregon
N
Kilometers
0 3 6 9
0 1.5 3 4.5
Miles
Critical Habitat
Location
Road
County

* * * * *

Dated: April 7, 2016.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–10712 Filed 5–10–16; 8:45 am]

BILLING CODE 4333–15–C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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FEDERAL REGISTER

Vol. 81 Wednesday,
No. 91 May 11, 2016

Part III

Department of the Treasury

Financial Crimes Enforcement Network

31 CFR Parts 1010, 1020, 1023, et al.
Customer Due Diligence Requirements for Financial Institutions; Final Rule

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Parts 1010, 1020, 1023, 1024, and 1026

RIN 1506–AB25

Customer Due Diligence Requirements for Financial Institutions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rules.

SUMMARY: FinCEN is issuing final rules under the Bank Secrecy Act to clarify and strengthen customer due diligence requirements for: Banks; brokers or dealers in securities; mutual funds; and futures commission merchants and introducing brokers in commodities. The rules contain explicit customer due diligence requirements and include a new requirement to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions.

DATES: The final rules are effective July 11, 2016.

Applicability Date: Covered financial institutions must comply with these rules by May 11, 2018.

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 1–800–767–2825. Email inquiries can be sent to *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of This Regulatory Action

Covered financial institutions are not presently required to know the identity of the individuals who own or control their legal entity customers (also known as beneficial owners). This enables criminals, kleptocrats, and others looking to hide ill-gotten proceeds to access the financial system anonymously. The beneficial ownership requirement will address this weakness and provide information that will assist law enforcement in financial investigations, help prevent evasion of targeted financial sanctions, improve the ability of financial institutions to assess risk, facilitate tax compliance, and advance U.S. compliance with international standards and commitments.

FinCEN believes that there are four core elements of customer due diligence (CDD), and that they should be explicit requirements in the anti-money laundering (AML) program for all covered financial institutions, in order to ensure clarity and consistency across sectors: (1) Customer identification and verification, (2) beneficial ownership identification and verification, (3) understanding the nature and purpose of customer relationships to develop a customer risk profile, and (4) ongoing monitoring for reporting suspicious transactions and, on a risk-basis, maintaining and updating customer information. The first is already an AML program requirement and the second will be required by this final rule. The third and fourth elements are already implicitly required for covered financial institutions to comply with their suspicious activity reporting requirements. The AML program rules for all covered financial institutions are being amended by the final rule in order to include the third and fourth elements as explicit requirements.

FinCEN has the legal authority for this action in the Bank Secrecy Act (BSA), which authorizes FinCEN to impose AML program requirements on all financial institutions[1] and to require financial institutions to maintain procedures to ensure compliance with the BSA and its implementing regulations or to guard against money laundering.[2]

B. Summary of the Major Provisions of the Rulemaking

1. Beneficial Ownership

Beginning on the Applicability Date, covered financial institutions[3] must identify and verify the identity of the beneficial owners of all legal entity customers (other than those that are excluded) at the time a new account is opened (other than accounts that are exempted). The financial institution may comply either by obtaining the required information on a standard certification form (Certification Form (Appendix A)) or by any other means that comply with the substantive requirements of this obligation. The financial institution may rely on the beneficial ownership information supplied by the customer, provided that it has no knowledge of facts that would reasonably call into question the reliability of the information. The identification and verification procedures for beneficial owners are very similar to those for individual customers under a financial institution's customer identification program (CIP),[4] except that for beneficial owners, the institution may rely on copies of identity documents. Financial institutions are required to maintain records of the beneficial ownership information they obtain, and may rely on another financial institution for the performance of these requirements, in each case to the same extent as under their CIP rule.

The terms used for the purposes of this final rule, including account, beneficial ownership, legal entity customer, excluded legal entities, new account, and covered financial institution, are set forth in the final rule.

Financial institutions should use beneficial ownership information as they use other information they gather regarding customers (*e.g.*, through compliance with CIP requirements), including for compliance with the Office of Foreign Assets Control (OFAC) regulations, and the currency transaction reporting (CTR) aggregation requirements.

2. Anti-Money Laundering Program Rule Amendments

The AML program requirement for each category of covered financial institutions is being amended to explicitly include risk-based procedures for conducting ongoing customer due diligence, to include understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile.

A customer risk profile refers to the information gathered about a customer at account opening used to develop a baseline against which customer activity is assessed for suspicious activity reporting. This may include self-evident information such as the type of customer or type of account, service, or product. The profile may, but need not, include a system of risk ratings or categories of customers.

In addition, customer due diligence also includes conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For these purposes, customer information shall include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230). The first clause of paragraph (ii) sets forth the requirement that financial institutions conduct monitoring to identify and report suspicious transactions. Because this includes transactions that are not of the sort the customer would be normally expected to engage, the customer risk profile information is used (among other sources) to identify such transactions. This information may be integrated into the financial institution's automated monitoring system, and may be used after a potentially suspicious transaction has been identified, as one means of determining whether or not the identified activity is suspicious.

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[1] 31 U.S.C. 5318(h)(2).

[2] 31 U.S.C. 5318(a)(2).

[3] The term "covered financial institution" refers to: (i) Banks; (ii) brokers or dealers in securities; (iii) mutual funds; and (iv) futures commission merchants and introducing brokers in commodities.

[4] 31 CFR 1020.220, 1023.220, 1024.220, 1026.220.

When a financial institution detects information (including a change in beneficial ownership information) about the customer in the course of its normal monitoring that is relevant to assessing or reevaluating the risk posed by the customer, it must update the customer information, including beneficial ownership information. Such information could include, *e.g.*, a significant and unexplained change in the customer's activity, such as executing cross-border wire transfers for no apparent reason or a significant change in the volume of activity without explanation. It could also include information indicating a possible change in the customer's beneficial ownership, because such information could also be relevant to assessing the risk posed by the customer. This applies to all legal entity customers, including those existing on the Applicability Date.

This provision does not impose a categorical requirement that financial institutions must update customer information, including beneficial ownership information, on a continuous or periodic basis. Rather, the updating requirement is event-driven, and occurs as a result of normal monitoring.

C. Costs and Benefits

This is a significant regulatory action pursuant to Executive Order 12866 ("E.O. 12866") because it is likely to result in a final rule that may have an annual effect on the economy of $100 million or more. Accordingly, FinCEN published for comment on December 24, 2015 a preliminary Regulatory Impact Assessment (RIA) for the proposed rule (80 FR 80308), which provided a quantitative estimate of the costs to the private sector for which adequate data are available and a qualitative discussion of both the costs and benefits for which data are not available. As a result of the comments submitted, FinCEN revised the preliminary RIA to include additional cost estimates [5] and is publishing with this final rule a final RIA. The annualized quantified costs (under low cost scenarios) are estimated to be $153 million (at a seven percent discount rate) and $148 million (at a three percent discount rate). The annualized quantified costs (under high cost scenarios) are estimated to be $287 million (at a seven percent discount rate) and $282 million (at a three percent discount rate). Because the benefits of the rule cannot be quantified, FinCEN has utilized a breakeven analysis to determine how large the final rule's benefits would have to be in order to justify its estimated costs. The RIA uses Treasury's estimate of $300 billion in illicit proceeds generated annually in the United States due to financial crimes, to determine the minimum level of effectiveness that the final rule would need to achieve for the benefits to equal the costs. Based on this analysis, using the upper bound of our cost assessment, FinCEN has concluded that the final rule would only have to reduce illicit activity by 0.6 percent to yield a positive net benefit. The Treasury Department believes that the final rule will reduce illicit activity by a greater amount than this.

II. Background

A. The Bank Secrecy Act

FinCEN exercises regulatory functions primarily under the Currency and Foreign Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 (PATRIOT Act) and other legislation, which legislative framework is commonly referred to as the "Bank Secrecy Act" (BSA).[6] The BSA authorizes the Secretary of the Treasury (Secretary) to require financial institutions to keep records and file reports that "have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism." [7]

The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.[8] FinCEN is authorized to impose anti-money laundering (AML) program requirements on financial institutions,[9] as well as to require financial institutions to maintain procedures to ensure compliance with the BSA and the regulations promulgated thereunder or to guard against money laundering.[10]

B. The Importance of Customer Due Diligence

FinCEN, after consultation with the staffs of the Federal functional regulators and the Department of Justice, has determined that more explicit rules for covered financial institutions with respect to customer due diligence (CDD) are necessary to clarify and strengthen CDD within the BSA regime, which in turn will enhance financial transparency and help to safeguard the financial system against illicit use. Requiring financial institutions to perform effective CDD so that they understand who their customers are and what type of transactions they conduct is a critical aspect of combating all forms of illicit financial activity, from terrorist financing and sanctions evasion to more traditional financial crimes, including money laundering, fraud, and tax evasion. For FinCEN, the key elements of CDD include: (i) Identifying and verifying the identity of customers; (ii) identifying and verifying the identity of beneficial owners of legal entity customers (*i.e.*, the natural persons who own or control legal entities); (iii) understanding the nature and purpose of customer relationships; and (iv) conducting ongoing monitoring. Collectively, these elements comprise the minimum standard of CDD, which FinCEN believes is fundamental to an effective AML program.

Clarifying and strengthening CDD requirements for U.S. financial institutions, including with respect to the identification of beneficial owners, advance the purposes of the BSA by:

(1) Enhancing the availability to law enforcement, as well as to the Federal functional regulators and self-regulatory organizations (SROs), of beneficial ownership information about legal entity customers obtained by U.S. financial institutions, which assists law enforcement financial investigations and a variety of regulatory examinations and investigations;

(2) Increasing the ability of financial institutions, law enforcement, and the intelligence community to identify the assets and accounts of terrorist organizations, corrupt actors, money launderers, drug kingpins, proliferators of weapons of mass destruction, and other national security threats, which strengthens compliance with sanctions programs designed to undercut financing and support for such persons;

(3) Helping financial institutions assess and mitigate risk, and comply with all existing legal requirements, including the BSA and related authorities;

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[5] In the final RIA, we estimate that 10-year quantifiable costs range from $1.15 billion to $2.15 billion in present value using a seven percent discount rate, and from $1.3 billion to $2.5 billion using a three percent discount rate.

[6] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 18 U.S.C. 1956, 1957, and 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR chapter X. *See* 31 CFR 1010.100(e).

[7] 31 U.S.C. 5311.

[8] Treasury Order 180–01 (July 1, 2014).

[9] 31 U.S.C. 5318(h)(2).

[10] 31 U.S.C. 5318(a)(2).

(4) Facilitating reporting and investigations in support of tax compliance, and advancing commitments made to foreign counterparts in connection with the provisions commonly known as the Foreign Account Tax Compliance Act (FATCA);[11]

(5) Promoting consistency in implementing and enforcing CDD regulatory expectations across and within financial sectors; and

(6) Advancing Treasury's broad strategy to enhance financial transparency of legal entities.

1. Assisting Financial Investigations by Law Enforcement

The abuse of legal entities to disguise involvement in illicit financial activity is a longstanding vulnerability that facilitates crime, threatens national security, and jeopardizes the integrity of the financial system. Criminals have exploited the anonymity that use of legal entities can provide to engage in money laundering, corruption, fraud, terrorist financing, and sanctions evasion, among other financial crimes.

There are numerous examples that Treasury has tracked as a part of its National Money Laundering Risk Assessment and Terrorist Financing Risk Assessment.[12] For example, in 2013, prosecutors in New York indicted 34 alleged members of Russian-American organized crime groups, charging that they participated in a range of racketeering activities. One of the constituent racketeering enterprises was alleged to have moved millions of dollars in unlawful gambling proceeds through a network of shell companies[13] in Cyprus and the United States.[14] In 2011, Federal prosecutors indicted 13 individuals for their alleged unlawful takeover and looting of a publicly-held mortgage company. Some of these defendants allegedly used the assets of the company to acquire shell companies, while other defendants are alleged to have further obscured the ownership of these companies through complex legal structures involving other shell companies.[15] In 2006, prosecutors indicted a number of individuals for their roles in supporting a long-running nationwide drug trafficking organization. The proceeds generated by this trafficking organization were laundered through numerous shell and shelf[16] corporations created to provide apparently legitimate fronts for this income. These legal entities were further used to open accounts at financial institutions and hold title to property.[17] Other examples cited by law enforcement officials include major drug trafficking organizations using shell companies to launder drug proceeds.[18] In 2011, a World Bank report highlighted how corrupt actors consistently abuse legal entities to conceal the proceeds of corruption, which the report estimates to aggregate at least $40 billion per year in illicit activity.[19] Other criminals also make aggressive use of front companies,[20] which may also conduct legitimate business activity, to disguise the deposit, withdrawal, or transfer of illicit proceeds that are intermingled with legitimate funds.

Strong CDD practices that include identifying and verifying the identity of the natural persons who own or control a legal entity—*i.e.*, the beneficial owners—help defend against these abuses in a variety of ways. The collection of beneficial ownership information by financial institutions can provide law enforcement with key details about suspected criminals who use legal structures to conceal their illicit activity and assets. Moreover, requiring legal entities seeking access to financial institutions to disclose identifying information, such as the name, date of birth, and Social Security number of natural persons who own or control them, will make such entities more transparent, and thus less attractive to criminals and those who assist them. Even if an illicit actor tries to thwart such transparency by providing false beneficial ownership information to a financial institution, law enforcement has advised FinCEN that such information can still be useful in demonstrating unlawful intent and in generating leads to identify additional evidence or co-conspirators.

2. Advancing Counterterrorism and Broader National Security Interests

As noted, criminals often abuse legal entities to evade sanctions or other targeted financial measures designed to combat terrorism and other national security threats. The success of such targeted financial measures depends, in part, on the ability of financial institutions, law enforcement, and intelligence agencies to identify a target's assets and accounts. These measures are thwarted when legal entities are abused to obfuscate ownership interests. Effective CDD helps prevent such abuses by requiring the collection of critical information, including beneficial ownership information, which may be helpful in implementing sanctions or other similar measures.

3. Improving a Financial Institution's Ability To Assess and Mitigate Risk

Explicit CDD requirements would also enable financial institutions to assess and mitigate risk more effectively in connection with existing legal requirements. It is through CDD that financial institutions are able to understand the risks associated with their customers, to monitor accounts more effectively, and to evaluate activity to determine whether it is unusual or suspicious, as required under suspicious activity reporting obligations.[21] Further, in the event that a financial institution files a suspicious activity report (SAR), information gathered through CDD in many instances can enhance SARs, which in turn can help law enforcement, intelligence, national security, and tax authorities investigate and pursue illicit financing activity.

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[11] Officially the Hiring Incentives to Restore Employment Act of 2010, Public Law 111–147, 124 Stat. 71, Section 501(a).

[12] U.S. Dep't of the Treasury, *National Money Laundering Risk Assessment* (2015), *available at http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Money%20Laundering%20Risk%20Assessment%20%E2%80%93%2006-12-2015.pdf*; U.S. Dep't of the Treasury, *National Terrorist Financing Risk Assessment* (2015), *available at http://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Terrorist%20Financing%20Risk%20Assessment%20%E2%80%93%2006-12-2015.pdf.*

[13] A shell company is a legal entity that has been registered with a state but has no physical operations or assets. Shell companies can serve legitimate purposes, such as holding financial assets or other property, but can also be used to conceal the source, ownership, or control of illegal proceeds. U.S. Dep't of the Treasury, *National Money Laundering Risk Assessment* at 43.

[14] *Id.* at 20.

[15] *Id.*

[16] A shelf corporation is a legal entity that has been registered with a state but not yet used for any purpose; it has instead been kept on the "shelf" for a buyer who does not want to go through the process of creating a new legal entity. *Id.*

[17] *Id.* at 44.

[18] *Combating Transnational Organized Crime: International Money Laundering as a Threat to Our Financial System, Before the Subcommittee on Crime, Terrorism, and Homeland Security, H. Comm. on the Judiciary, 112th Cong.* (February 8, 2012) (statement of Jennifer Shasky Calvery as Chief, Asset Forfeiture and Money Laundering Section, Criminal Division of the U.S. Department of Justice).

[19] *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It,* The International Bank for Reconstruction and Development/The World Bank (2011).

[20] A front company is a legitimate business that combines illicit proceeds with earnings from its legitimate operations, thereby obscuring the source of the illegitimate funds. *See* U.S. Dep't of the Treasury, *National Money Laundering Risk Assessment* at 43.

[21] *See, e.g.,* 31 CFR 1020.320.

4. Facilitating Tax Compliance

Customer due diligence also facilitates tax reporting, investigations and compliance. For example, information held by banks and other financial institutions about the beneficial ownership of companies can be used to assist law enforcement in identifying the true owners of assets and their true tax liabilities. The United States has long been a global leader in establishing and promoting the adoption of international standards for transparency and information exchange to combat cross-border tax evasion and other financial crimes. Strengthening CDD is an important part of that effort, and it will dovetail with other efforts to create greater transparency, some of which are longstanding, such as the United States' commitments to exchanging information with other jurisdictions under its tax treaties and tax information exchange agreements, and others of which are new, such as the information reporting requirements under FATCA.[22] FATCA requires foreign financial institutions to identify U.S. account holders, including legal entities with substantial U.S. ownership, and to report certain information about those accounts to the Internal Revenue Service (IRS).[23] The United States has negotiated with foreign governments to enter into intergovernmental agreements that facilitate the effective implementation of these requirements. These agreements allow foreign financial institutions to rely on existing AML practices in a number of circumstances, including, in the case of the intergovernmental agreements, for purposes of determining whether certain legal entity customers are controlled by U.S. persons. Pursuant to many of these agreements, the United States has committed to pursuing equivalent levels of reciprocal automatic information exchange with respect to collecting and reporting to the authorities of the FATCA partner jurisdiction information on the U.S. financial accounts of residents of that jurisdiction. A general requirement for U.S. financial institutions to obtain beneficial ownership information for AML purposes advances this commitment, and puts the United States in a better position to work with foreign governments to combat offshore tax evasion and other financial crimes.

5. Promoting Clear and Consistent Expectations and Practices

Customer due diligence is universally recognized as fundamental to mitigating illicit finance risk, even though not all financial institutions use the specific term "customer due diligence" to describe their practices. While Treasury understands from its outreach to the private sector that financial institutions broadly accept this principle and implement CDD practices in some form under a risk-based approach, financial institutions have expressed disparate views about what precise activities CDD entails. At public hearings held after the closing of the comment period to the Advance Notice of Proposed Rulemaking (ANPRM),[24] discussed below, financial institutions described widely divergent CDD practices, especially with respect to identifying and verifying the identities of beneficial owners outside of limited circumstances prescribed by statute.[25] For example, during one of these hearings, FinCEN learned that some financial institutions already obtain beneficial ownership information in all circumstances, while others obtain this information only for certain categories of customers or following a triggering event. Institutions also identified a range of practices, from varied percentage of ownership thresholds, to the extent of information collected (*e.g.,* only the name of the beneficial owner(s) versus collection of additional information, such as addresses, etc.).[26]

FinCEN believes that this disparity adversely affects efforts to mitigate risk and can promote an uneven playing field across and within financial sectors. Financial institutions have noted that unclear CDD expectations can result in inconsistent regulatory examinations, potentially causing them to devote their limited resources to managing derivative legal risk rather than fundamental illicit finance risk. Private sector representatives have also noted that inconsistent expectations can effectively discourage best practices, because financial institutions with robust compliance procedures may believe that they risk losing customers to other institutions with more lax procedures. Greater consistency across the financial system addresses this competitive inequality.

Providing a consolidated and clear CDD framework will help address these issues. As part of this framework, expressly stating CDD requirements in these regulations with respect to (i) understanding the nature and purpose of customer relationships and (ii) conducting ongoing monitoring will facilitate more consistent implementation, examination, supervision and enforcement of these expectations. With respect to the beneficial ownership requirement, requiring all covered financial institutions to identify and verify the identities of beneficial owners in the same manner and pursuant to the same definition also promotes consistency across industry. Requiring covered financial institutions to operate under one clear CDD framework will promote a more level playing field across and within financial sectors.

6. Advancing Treasury's Broad Strategy To Enhance Financial Transparency of Legal Entities

Finally, clarifying and strengthening CDD is an important component of Treasury's broader three-part strategy to enhance financial transparency of legal entities. Other key elements of this strategy include: (i) Increasing the transparency of U.S. legal entities through the collection of beneficial ownership information at the time of the legal entity's formation and (ii) facilitating global implementation of international standards regarding CDD and beneficial ownership of legal entities.

This final rule thus complements the Administration's ongoing work with Congress to facilitate adoption of legislation that would require the collection of beneficial ownership information at the time that legal entities are formed in the United States. This final rule also advances Treasury's ongoing work with the Group of Twenty Finance Ministers and Central Bank Governors (G–20), the Financial Action Task Force (FATF), the Global Forum on Transparency and Exchange of Information for Tax Purposes, and other global partners, who have emphasized the importance of improving CDD practices and requiring the disclosure of beneficial ownership information at the time of company formation or transfer. Moreover, this proposal furthers the

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[22] Hiring Incentives to Restore Employment Act of 2010, Public Law 111–147, Section 501(a).

[23] *See generally* Internal Revenue Service, "Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities," RIN 1545–BK68 (January 28, 2013), *available at http://www.irs.gov/PUP/businesses/corporations/TD9610.pdf.* For further updates on FATCA regulations, see *http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-(FATCA).*

[24] Financial Crimes Enforcement Network (FinCEN), "Customer Due Diligence Requirements for Financial Institutions," 77 FR 13046 (March 5, 2012).

[25] *See, e.g.,* FinCEN, *Summary of Public Hearing: Advance Notice of Proposed Rulemaking on Customer Due Diligence* (October 5, 2012), *available at http://www.fincen.gov/whatsnew/html/20121130NYC.html.* ("Participants expressed varied views as to whether, how and in what circumstances, financial institutions obtain beneficial ownership information.").

[26] *Id.*

United States' Group of Eight (G–8) commitment as set forth in the United States G–8 Action Plan for Transparency of Company Ownership and Control, published on June 18, 2013.[27] This Action Plan is in line with principles agreed to by the G–8, which the Administration noted "are crucial to preventing the misuse of companies by illicit actors." [28] It is also found in the U.S. Action Plan to Implement the G–20 High Level Principles on Beneficial Ownership, published on October 16, 2015.[29] While these elements are all proceeding independently, together they make up a comprehensive approach to promoting financial transparency of legal entities.

C. The Advance Notice and Notice of Proposed Rulemaking

FinCEN initiated this rulemaking process in March 2012 by issuing an ANPRM that described FinCEN's potential proposal for codifying explicit CDD requirements, including customer identification and verification, understanding the nature and purpose of accounts, ongoing monitoring, and obtaining and verifying beneficial ownership information.[30] FinCEN received 90 comments, mostly from banks, credit unions, securities and futures firms, mutual funds, casinos, and money services businesses. In general, these commenters raised concerns about the potential costs and practical challenges associated with a categorical requirement to obtain beneficial ownership information. They also expressed concerns with respect to FinCEN's articulation of the other components of CDD (understanding the nature and purpose of customer relationships and ongoing monitoring), asserting that, contrary to FinCEN's stated intention, these would in part be new requirements rather than an explicit codification of pre-existing obligations. To better understand and address these concerns, Treasury held five public hearings from July to December 2012 in Washington, DC, Chicago, New York, Los Angeles and Miami.[31] At these meetings, participants expressed their views on the ANPRM and offered specific recommendations about how best to balance the benefits with the practical burdens associated with obtaining beneficial ownership information. These discussions were critical in the development of the Notice of Proposed Rulemaking (NPRM) issued on August 4, 2014 (79 FR 45151).

The NPRM proposed a new requirement for covered financial institutions to identify the natural person or persons who are beneficial owners of legal entity customers opening new accounts, subject to certain exemptions, and to verify the identity of the natural person(s) identified. As proposed, a covered financial institution would satisfy this requirement at the time a new account is opened by obtaining information on a standard certification form directly from the individual opening the new account on behalf of the legal entity customer, and by verifying the identity of the natural person(s) identified consistent with existing customer identification program (CIP) procedures for verifying the identity of customers who are natural persons. The NPRM thus sought to facilitate this proposed new requirement by leveraging the CIP procedures that have been required of all covered financial institutions since 2003. The NPRM also proposed that the AML program requirements for all types of covered financial institutions be amended to include appropriate risk-based procedures for conducting ongoing due diligence, to include: (i) Understanding the nature and purpose of customer relationships in order to develop a customer risk profile; and (ii) conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions. FinCEN viewed this part of the rulemaking as not imposing new requirements, but rather making explicit the activities that covered financial institutions are already expected to undertake, based on guidance and supervisory expectations, in order to satisfy their existing obligations to detect and report suspicious activities.

D. Summary of Comments

In response to the NPRM, FinCEN received 141 comments from financial institutions, trade associations, Federal and State agencies, non-governmental organizations, members of Congress, and other individuals. The great majority of the private sector commenters, which were primarily banks, credit unions, and their trade associations, asserted that the proposed beneficial ownership requirement would be very burdensome to implement and require more than the proposed 12 months, would be far more expensive than estimated by FinCEN, and would not achieve the proposal's expressed goals.

The commenters addressed many aspects of the proposed beneficial ownership requirement, including the use of the proposed certification form; the extent to which a covered financial institution may rely on the information provided by the customer; the meaning of verification and the extent to which it would be required; the application of the requirement to existing customers; the extent to which the information would need to be updated; and the definitions of beneficial ownership and legal entity customer and the proposed exclusions from those definitions.

Commenters raised a number of questions regarding the proposed certification form, including whether beneficial owner information must be obtained through the certification form or could be obtained by other means; whether the certification form should be an official government form; and who is authorized to sign the certification form on behalf of the customer. Many urged FinCEN to treat the receipt of the certification form as a "safe harbor," similar to the treatment of the certification used for compliance with the foreign shell bank regulation.[32] Commenters submitted several other comments and suggestions regarding the information to be included in the certification form.

Many commenters sought clarification regarding the verification requirement and the extent to which a financial institution may rely on the information submitted by its customer. Financial institutions also pointed out that there would be difficulties with adopting "identical" procedures to those used for verifying the identity of individual customers as done for CIP. Moreover, many commenters noted the practical difficulties resulting from the fact that there is no authoritative source for beneficial ownership information of legal entities, as there is no requirement for U.S. States to collect this information at the time a company is formed. Commenters also sought guidance regarding how they should utilize the beneficial ownership information once collected and how its availability would impact compliance with other obligations.

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[27] United States G–8 Action Plan for Transparency of Company Ownership and Control, *available at http://www.whitehouse.gov/the-press-office/2013/06/18/united-states-g-8-action-plan-transparency-company-ownership-and-control.*

[28] White House Fact Sheet: U.S. National Action Plan on Preventing the Misuse of Companies and Legal Arrangements (June 18, 2013), *available at http://www.whitehouse.gov/the-press-office/2013/06/18/fact-sheet-us-national-action-plan-preventing-misuse-companies-and-legal.*

[29] U.S. Action Plan to Implement the G–20 High Level Principles on Beneficial Ownership, *available at https://www.whitehouse.gov/blog/2015/10/16/us-action-plan-implement-g-20-high-level-principles-beneficial-ownership.*

[30] Two years prior to that, in March 2010, FinCEN, along with several other agencies, published *Joint Guidance on Obtaining and Retaining Beneficial Ownership Information,* FIN–2010–G001 (March 5, 2010). Industry reaction to this guidance is one reason that FinCEN sought to further clarify CDD requirements by making them explicit within FinCEN's regulations.

[31] *Summary of Public Hearing: Advance Notice of Proposed Rulemaking on Customer Due Diligence* (July 31, 2012), *available at http://www.regulations.gov/#!documentDetail;D=FINCEN-2012-0001-0094; Summary of Public Hearing: Advance Notice of Proposed Rulemaking on Customer Due Diligence* (September 28, 2012), *available at http://www.fincen.gov/whatsnew/html/20121130CHI.html; Summary of Public Hearing: Advance Notice of Proposed Rulemaking on Customer Due Diligence* (October 5, 2012), *available at http://www.fincen.gov/whatsnew/html/20121130NYC.html; Summary of Public Hearing: Advance Notice of Proposed Rulemaking on Customer Due Diligence* (October 29, 2012), *available at http://www.fincen.gov/whatsnew/html/20121130LA.html; Summary of Public Hearing: Advance Notice of Proposed Rulemaking on Customer Due Diligence* (December 3, 2012), *available at http://www.fincen.gov/whatsnew/pdf/SummaryofHearing-MiamiDec3.pdf.*

[32] 31 CFR 1010.630(b).

While many private sector commenters noted that the proposed definition of beneficial owner was an improvement over the definition discussed in the ANPRM, some sought greater clarity about the meaning of "indirect" ownership and guidance regarding how the percentage of ownership held indirectly should be measured in specific situations, as well as clarification of the meaning of "equity interest." They also suggested eliminating any reference to using a 10 percent threshold on a risk basis, so as to reduce the likelihood of examiners requiring a threshold lower than the 25 percent specified in the proposed rule. On the other hand, non-governmental organizations and many individuals asserted that the proposed 25 percent ownership threshold is too high and that it should be lowered to 10 percent (or eliminated entirely) in the final rule.

A number of commenters urged clarification of the proposed definition of "legal entity customer," and many urged expansion of the proposed exclusions from the definition to include, for example, accounts opened to participate in employee benefit plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) and accounts for foreign publicly traded companies, regulated financial institutions, and governmental entities. Many commenters also noted difficulties in applying the proposed exclusion for nonprofits and urged FinCEN to simplify it. Commenters also sought clarification regarding whether beneficial ownership would need to be obtained each time a legal entity customer opens a new account after the rule's compliance deadline, and to what extent the information would need to be updated. Some commenters also sought to exempt from the beneficial ownership requirement certain categories of financial products that they contended presented a low risk of money laundering.

Many comments also addressed the proposed amendments to the AML program rules, including urging FinCEN to clarify the proposed requirement to understand the nature and purpose of the customer relationship and the meaning of "customer risk profile" and of the proposed requirement to conduct ongoing monitoring to update customer information, separate from monitoring to detect and report suspicious activity. Some commenters representing the securities and futures industries asserted that, contrary to assumptions in the NPRM, these are not in fact existing requirements in those industries, and that such requirements would be burdensome and of little utility. Some commenters also questioned statements in the preamble that the proposed requirements would not reduce or limit the due diligence expectations of the Federal functional regulators or their regulatory discretion, asserting that such an approach would undermine the clarity and consistency that FinCEN is seeking to provide by the proposed rules. Finally, a great majority of the comments stated that the proposed 12-month implementation period following issuance of a final rule would not be adequate to implement the necessary modifications to their data systems, customer on-boarding procedures, employee training, and other requirements, and sought a period of at least 18–24 months.

Based on the comments addressing the potential cost of implementing the requirement, FinCEN conducted outreach to a number of the financial institution commenters to obtain additional information regarding the anticipated costs of implementing the proposed requirements. As a result of the limited information received from these discussions, Treasury prepared a preliminary Regulatory Impact Assessment (RIA) that was made available for comment on December 24, 2015 (80 FR 80308). FinCEN received 38 comments on this preliminary assessment; a summary of the comments we received and the final RIA is included in the Regulatory Analysis section of this preamble.

All of the substantive comments received on the NPRM, FinCEN's response, and resulting modifications to the final rule are discussed in detail in the following Section-by-Section Analysis. However, we first address certain general comments.

E. General Comments

Regulatory deference. Commenters raised a number of general comments regarding this rulemaking. Several commenters took issue with the following statement in the NPRM (which we reiterate here as modified for this final rule).[33]

> Nothing in this final rule is intended to lower, reduce, or limit the due diligence expectations of the Federal functional regulators or in any way limit their existing regulatory discretion. To clarify this point, the final rule incorporates the CDD elements on nature and purpose and ongoing monitoring into FinCEN's existing AML program requirements, which generally provide that an AML program is adequate if, among other things, the program complies with the regulation of its Federal functional regulator (or, where applicable, self-regulatory organization (SRO)) governing such programs.[34] In addition, the Treasury Department intends for the requirements contained in the customer due diligence and beneficial ownership final rules to be consistent with, and not to supersede, any regulations, guidance or authority of any Federal banking agency, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), or of any SRO relating to customer identification, including with respect to the verification of the identities of legal entity customers.

These commenters contended, among other things, that these statements were unduly deferential to the Federal functional regulators, and would serve to undermine rather than promote clear and consistent CDD standards across financial sectors. They accordingly urged FinCEN to strike this language from the final rulemaking.

FinCEN appreciates the concerns about uneven and inconsistent application of CDD standards that underlie these comments, but nevertheless believes that these statements are an important articulation of FinCEN's understanding of what it is—and is not—accomplishing by this rulemaking. At their core, these statements in the NPRM and this final rule preamble articulate the nature of the relationship of FinCEN's rulemaking authority with that of the Federal functional regulators[35]—that is, as with

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[33] The original statement can be found at 79 FR 45152 (Aug. 4, 2014).

[34] *See, e.g.,* 31 CFR 1020.210, which currently provides that a financial institution regulated by a Federal functional regulator that is not subject to the regulations of a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with *the regulation of its Federal functional regulator governing such programs.* (emphasis added).

[35] Where appropriate, working closely with Federal functional regulators may involve

Continued

all BSA rulemakings, FinCEN determines the appropriate minimum regulatory standards that should apply across an industry. From that baseline, the Federal functional regulators have authority to establish AML program requirements in addition to those established by FinCEN that they determine are necessary and appropriate to address risk or vulnerabilities specific to the financial institutions they regulate. This is particularly true within the context of separate but related concerns that exist for these institutions beyond the strict scope of AML, such as in the area of safety and soundness. These statements simply reflect this basic reality of the existing regulatory framework. Furthermore, as we have maintained throughout this rulemaking process, one of our overarching goals was to clarify and harmonize expectations while at the same time minimizing disruption to the greatest extent possible. Accordingly, we believe that it is critical to make clear—especially with respect to the changes to the AML program rules—that these standards simply articulate current practices pursuant to existing standards and expectations, in order to facilitate implementation and minimize the burden on financial institutions. We believe that leveraging the experience accrued from interpretation of and compliance with prior regulations and guidance that have already been issued in this space will be a net benefit to financial institutions. As FinCEN explained in the proposal, these requirements represent a floor, not a ceiling, and, consistent with the risk-based approach, financial institutions may do more in circumstances of heightened risk, as well as to mitigate risks generally.

Compliance Deadline. Most commenters strongly opposed FinCEN's proposal for a compliance deadline of one year from the date the final rule is issued, identifying a wide range of changes to systems and processes that would be required in order to implement the rule. Many of these commenters requested that FinCEN provide financial institutions two years to implement the final rule. Based on the well-founded, detailed explanations put forth by these commenters of the difficulties that would arise from a one-year implementation period, FinCEN is extending the period for implementation to two years from the date this final rule is issued (the Applicability Date).

III. Section-by-Section Analysis

Section 1010.230 Beneficial Ownership Requirements for Legal Entity Customers

Section 1010.230(a) In general. As proposed, this paragraph delineated in broad terms the scope of the beneficial ownership obligation—*i.e.,* that covered financial institutions are required to establish and maintain written procedures reasonably designed to identify and verify the identities of beneficial owners of legal entity customers. There were no significant objections to this general formulation, and we are adopting it as proposed, with the addition that the procedures adopted will be included in the institution's AML program.

Several commenters questioned the efficacy of having financial institutions collect beneficial ownership information, contending that State government offices responsible for the formation and registration of legal entities and/or the IRS would be better suited to collect this information due to their roles in the company formation process. Although FinCEN supports the collection of beneficial ownership information in these other circumstances as well, it does not believe that such collection would replace the independent obligation of financial institutions to collect this information. As described above, we view this rulemaking as but one part of Treasury's comprehensive strategy to enhance financial transparency in the U.S. financial system and worldwide, and we believe the beneficial ownership requirement for financial institutions would be necessary even if these other measures were already in place. One of the principal rationales for this new requirement is that financial institutions should know who their customers are to help them more effectively mitigate risks. This requirement is therefore separate from a policy objective of requiring States to obtain beneficial ownership information from the legal entities they create at the time of formation and upon specified circumstances thereafter (although none currently have such requirements). Presently, corporate laws and regulations differ from State to State, and from FinCEN's regulations, but generally do not require information regarding beneficial ownership. Thus, the information that will be provided under FinCEN's regulations will significantly augment information presently available to law enforcement from State authorities, thereby improving the overall investigative, regulatory, and prosecutorial processes.

In the NPRM, FinCEN proposed that the beneficial ownership requirement would apply only with respect to legal entity customers that open new accounts going forward from the date of implementation, noting that many commenters to the ANPRM viewed a retroactive requirement to obtain beneficial ownership information for all existing accounts as extremely burdensome. We received comments reflecting a wide range of views on this subject. The vast majority of commenters who addressed this issue reiterated this objection to retroactive application of the beneficial ownership obligation. A few commenters, however, urged FinCEN to require covered financial institutions to collect beneficial ownership information on existing accounts on a categorical basis, while some others thought that financial institutions should collect this information retroactively for all higher risk customers.

We decline to impose a categorical, retroactive requirement. Based on our understanding of the significant changes to processes and systems that will be required to implement this requirement simply on a prospective basis, we believe that retroactive application would be unduly burdensome. As we noted in the proposal, the absence of a categorical mandate to apply the requirement retroactively would not preclude financial institutions from deciding that collecting beneficial ownership information on some customers on a risk basis during the course of monitoring may be appropriate for their institution. In our assessment, we have concluded that financial institutions should obtain beneficial ownership information from customers existing on the Applicability Date when, in the course of their normal monitoring, the financial institution detects information relevant to assessing or reevaluating the risk of such customer (as more fully described in the sections below addressing the amended AML program requirements).

Section 1010.230(b) Identification and Verification. In the NPRM, FinCEN proposed that covered financial institutions be required to develop customer due diligence procedures that enabled institutions to (1) identify the beneficial owner(s) of legal entity customers by collecting a mandatory certification form provided by the individual opening the account on behalf of the legal entity customer; and (2) verify the identity of the identified beneficial owner(s) according to risk-based procedures that are, at a minimum, identical to the institutions' CIP procedures required for verifying

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consulting with the applicable SROs in the securities and futures/commodities industries.

the identity of customers that are individuals.

Section 1010.230(b)(1). The NPRM proposed to require the use of a standard certification form (Certification Form) in order to, among other purposes, promote consistent practices and regulatory expectations, reduce compliance burden, and provide a uniform customer experience across much of the U.S. financial system. To facilitate institutions' abilities to rely upon the Certification Form, the proposed Certification Form included a section that required the individual opening the account on behalf of a legal entity customer to certify that the information provided on the form is true and accurate to the best of his or her knowledge. Commenters raised a number of issues regarding this proposed requirement. Some commenters asked whether the Certification Form must be used to obtain the information, whether the Certification Form should be an official government form, and what individuals representing the customer would be authorized to provide the Certification Form. Several commenters urged a variety of changes to the fields on the Certification Form in order to conform it more closely to current CIP requirements, to otherwise facilitate use of the form, and to promote other regulatory goals. Some commenters also urged FinCEN to provide a safe harbor to institutions that use the model Certification Form adopted in the final rule akin to, for example, the safe harbor provided for foreign bank certifications.[36]

The comments FinCEN received related to the Certification Form varied widely. Some commenters urged FinCEN to make the Certification Form an official U.S. Government document, with the certification made under the penalty of perjury (rather than only to the best of the knowledge of the certifying party), and a few commenters thought that the Certification Form should be notarized. However, many commenters requested that the proposed Certification Form be permissive rather than mandatory, and that financial institutions be permitted to obtain the information through their standard account opening process without utilizing the Certification Form. A few commenters thought that the person opening the account should be required to have actual personal knowledge of the information provided on the Certification Form, or that the certification should take the form of a resolution ratified or adopted by the legal entity's board or governing body. These commenters thought that a Certification Form without attestation requirements more substantial than those in the proposal would reduce accountability for false representations on the Certification Form.

As noted above, a primary reason that FinCEN proposed the Form was to balance the benefits and burdens of this new requirement to the financial institution and its customers with the benefits to law enforcement and regulatory authorities. We also note that in the case of many legal entities that are small businesses, the natural person opening the account will often be one of the beneficial owners, who would have direct knowledge of the beneficial ownership information of the legal entity customer. FinCEN understands that many institutions obtain and maintain customer data electronically rather than in paper form to the greatest extent possible, and that mandating the use and retention of a specific form would require significant technological and operational changes that could be costly and challenging to implement for some financial institutions. We have therefore amended the final rule to permit, but not require, financial institutions to use the Certification Form to collect beneficial ownership information. Accordingly, in the final rule, § 1010.230(b)(1) is revised to state that covered financial institutions must identify the beneficial owner(s) of each legal entity customer at the time a new account is opened, unless the customer is otherwise excluded or the account is exempted. A covered financial institution may accomplish this either by obtaining certification in the form of appendix A of the section from the individual opening the account on behalf of the legal entity customer, or by obtaining from the individual the information required by the form by another means, provided the individual certifies, to the best of the individual's knowledge, the accuracy of the information.[37]

Thus, covered financial institutions can satisfy this requirement through (1) the use of FinCEN's Certification Form; (2) the use of the financial institution's own forms, so long as they meet the requirements of § 1010.230(b)(1); or (3) any other means that satisfy the substantive requirements of § 1010.230(b)(1). These records may be retained electronically and incorporated into existing databases as a part of financial institutions' overall management of customer files, and covered financial institutions will have flexibility in integrating the beneficial ownership information requirement into existing systems and processes. The certification of accuracy by the individual submitting the information may be obtained without use of the Certification Form in the same way the financial institution obtains other information from its customers in connection with its account opening procedures. FinCEN expects that such flexibility will facilitate the implementation of the beneficial ownership requirement—some commenters noted that giving financial institutions flexibility in integrating this requirement would substantially reduce resource outlays to change customer onboarding processes and to train front-line employees. In addition, to facilitate use of the Certification Form by those institutions that choose to utilize it, FinCEN will also make an electronic version available, although it will not be an official U.S. Government form.

Some commenters asked that FinCEN clarify who an appropriate individual to certify the identity of the beneficial owners to the financial institution would be, whether by signing the Certification Form or otherwise providing the beneficial ownership information in accordance with this paragraph; some commenters also questioned whether the individual opening an account could be a low-level employee without knowledge of the entity's owners. In this regard, FinCEN declines to impose specific account-opening procedures on financial institutions, and believes that financial institutions should be able to integrate this new requirement into their institution's existing procedures with little disruption. FinCEN understands that financial institutions generally have long-standing policies and procedures, based on sound business practices and prudential considerations, governing the documentation required to open an account for a legal entity; these typically include resolutions authorizing the entity to open an account at the institution and identifying the authorized signatories. Such resolutions are typically certified by an appropriate individual, *e.g.*, the secretary or other officer of a corporation, a member or manager of an LLC, or partner of a partnership. It would be appropriate for the same individual to certify the identity of the beneficial owners. Such an individual would typically have at least some familiarity with the entity's owners and with individuals with responsibility to control or manage the entity, but may not have personal knowledge of individuals having an indirect ownership interest through, for example, intermediate legal entities or contractual arrangements with nominal owners, and would have to rely on others for any such information. Therefore, while FinCEN anticipates that the certifying individual would generally be able to provide accurate beneficial ownership information, it is appropriate that it be provided to the best of such person's knowledge, rather than without qualification. Accordingly, FinCEN declines to require a heightened knowledge threshold, or notarization, or board approval requirement for the certification requirement, as some commenters suggested, as any such requirement would increase the amount of time to open an account, without commensurate benefit, and would be inconsistent with FinCEN's goal of integrating this requirement into existing financial institution onboarding procedures to the greatest extent possible.[38] FinCEN thus believes that the certification requirement as described in the final rule provides the appropriate level of accountability given the circumstances.[39]

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[36] 31 CFR 1010.630(b).

[37] This revision will also require a corresponding change to the Recordkeeping subsection, described in greater detail below.

Some commenters urged FinCEN to permit financial institutions to rely upon alternative sources, such as previously collected customer information in their databases, or the IRS Form W–8BEN, to satisfy the certification requirement. FinCEN recognizes that this could facilitate financial institutions' ability to obtain this information. However, to be of greatest use, FinCEN believes that beneficial ownership information must be, at the time of account opening, both (1) current, and (2) certified by an individual authorized by the customer to open accounts at financial institutions to be accurate to the best of his or her knowledge. Furthermore, because FinCEN's definition of beneficial ownership does not align precisely with, for example, the IRS's definition in its Form W–8BEN, permitting reliance in some circumstances upon other agencies' forms would be at odds with FinCEN's goal of consistent beneficial ownership standards within and across industries for purposes of CDD. Thus, FinCEN declines to permit reliance solely upon previously gathered alternate sources of beneficial ownership information.

Several commenters raised specific questions regarding the information in the proposed Certification Form. FinCEN agrees with the suggestions made by several commenters that the title of the person with significant management responsibility, as well as of the person submitting the Certification Form or supplying the information, should be included and has made these changes to the Form. We have also added fields on the Certification Form in which to identify the type of legal entity, and to note its address. Other commenters noted that the address fields as laid out in the proposed Certification Form, along with the description of the address requirement in the general instructions section, were not congruent with CIP's address requirements, and accordingly asked FinCEN to confirm that the CIP rules' address requirements remained applicable. As described in greater detail below, covered financial institutions' procedures for identifying and verifying beneficial owners must contain all the elements of the applicable CIP rule, including the address, date of birth, and Taxpayer Identification Number requirements as set forth therein. Accordingly, FinCEN has revised the Certification Form to clarify this point, and notes that this information will be required whether or not the Certification Form is used. We have also amended item "a" of the Certification Form to clarify that the name of the certifying party should be that of a *natural* person authorized to open the account (and not of the legal entity itself). FinCEN also agrees with the suggestion made by a number of commenters that the Certification Form state that the information in the Certification Form is required by Federal regulation in order to explain to customers why this new requirement has been put in place; the Form has been edited appropriately.

Several commenters sought clarification as to whether a financial institution must identify and verify a legal entity customer's beneficial owners each time it opens a new account at the institution after the rule's compliance deadline, or whether the requirement applies only the first time it opens a new account at such institution. FinCEN has concluded that, while it is not requiring periodic updating of the beneficial ownership information of all legal entity customers at specified intervals, the opening of a new account is a relatively convenient and otherwise appropriate occasion to obtain current information regarding a customer's beneficial owners. Accordingly, FinCEN has added to the final rule as § 1010.230(g) a definition for "new account".

One commenter urged FinCEN to mandate the use of the Legal Entity Identifier (LEI), a global standardized unique identifier for legal entities engaged in financial transactions, on the proposed Certification Form. This commenter noted that including such a requirement would further the goals of transparency and financial stability. FinCEN understands that the LEI was developed principally to aggregate data from across markets, products, and regions, giving global regulators a means to quickly identify parties to financial transactions, in order to enhance regulators' ability to understand systemic risks to the financial system and act accordingly. Although this is an important and laudable purpose, FinCEN does not believe that mandating the LEI's inclusion on the beneficial ownership Certification Form would further this goal substantially. We believe that the overwhelming majority of legal entities subject to this requirement will be smaller or non-financial entities that would not be typical applicants for LEIs in the first instance, and that the costs of mandating its use solely for the purposes of the Certification Form would not be outweighed by the benefit. FinCEN also understands that the authorized bodies that assign LEIs do not require the beneficial owner to be a natural person, use a 50 (rather than 25) percent threshold, and do not verify the identities of beneficial owners of legal entities, thereby rendering the LEI's utility as a possible proxy or alternative source of verification minimal. For these reasons, FinCEN declines to mandate the use of the LEI. We do, however, recognize that covered financial institutions may find such information useful for enterprise-wide risk management or other purposes, and have accordingly included an optional LEI field on the Certification Form.

Several commenters urged FinCEN to adopt an express safe harbor in the final rule deeming those financial institutions that use the Certification Form compliant with the beneficial ownership requirement. A few commenters recommended that FinCEN model such an express safe harbor on the safe harbor for foreign bank certifications found in § 1010.630. Other commenters opposed the notion of a safe harbor, contending that the Certification Form should serve as the starting point for financial institutions' risk-based due diligence into a legal entity's beneficial ownership. As discussed in greater detail below, we have included in § 1010.230(b)(2) of the final rule a description of the extent to which financial institutions can rely upon the beneficial ownership information provided by the person opening the account. We decline, however, to include in the final rule a blanket safe harbor triggered by the use and collection of the standard Certification Form.

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[38] FinCEN notes that in cases where the individual signing the documentation to open the account (and identifying the legal entity's beneficial owners) does not deliver such documentation to the financial institution, it may be appropriate that the individual's signature be notarized.

[39] FinCEN also understands that in cases where a newly formed legal entity opens a financial institution account in order to commence business, the beneficial owner(s) would typically open the account in person and be the signatories on the account, and could readily certify their status as beneficial owners at that time.

FinCEN believes that there are a number of factors present in the context of foreign bank certifications (but absent here) that make a blanket safe harbor appropriate in that context. The foreign bank certification was used to satisfy several obligations arising under Sections 313 and 319(b) of the USA PATRIOT Act, including not only for the foreign bank to certify facts such as its status and in certain cases its owners, but also to set forth its agreement not to provide banking services to foreign shell banks and to appoint a U.S. process agent. Moreover the foreign bank official was required to certify that the information in the document was true and correct, whereas the beneficial ownership information is to be provided to the best of the knowledge of the customer's agent. In addition, the population of legal entities subject to the final rule is exponentially larger than that of foreign banks with U.S. correspondent accounts, and the proposed certification in the proposed rule does not include affirmative obligations. We believe that the provision inserted into § 1010.230(b)(2) of the final rule describing the extent to which the financial institution may rely on the information provided by the customer strikes the right balance between the need to minimize burden upon covered financial institutions and the risk of abuse of legal entities for illicit purposes.

A few commenters raised concerns that the collection of sensitive personal information of beneficial owners would impinge upon their privacy and increase their vulnerability to identity theft. FinCEN recognizes the critical importance of protecting individuals' privacy interests, as well as the serious threat posed by cyberattacks and identity theft, particularly with respect to the personal information held at financial institutions. These concerns, while valid and significant, are insufficient to justify elimination of the requirement. From both the privacy and identity-theft perspectives, the incremental impact upon the vast majority of beneficial owners will be slight, because, pursuant to CIP requirements, they already have to provide the same sensitive personal information to financial institutions to open individual accounts and access the U.S. financial system. We note that financial institutions are expected to protect this information just as they do CIP information, as well as comply with all applicable Federal and State privacy laws, including, but not limited to, the Right to Financial Privacy Act[40] and the Gramm-Leach-Bliley Act.[41]

Section 1010.230(b)(2). With respect to verification of identity, we proposed that verification meant that financial institutions were required to verify the *identity* of the individual identified as a beneficial owner (*i.e.*, to verify the individual's existence), and not his or her *status* as a beneficial owner. We proposed that this verification be done via risk-based procedures that are identical to the institutions' CIP procedures required for verifying the identity of customers that are individuals, to facilitate financial institutions' implementation of the requirement through leveraging existing procedures and systems.

Many commenters sought clarification of the meaning of the verification requirement in proposed § 1010.230(b)(2) and the means by which it may be accomplished. Some pointed out the potential confusion between two statements in the NPRM discussing the distinction between verifying the identity of the beneficial owner and verifying the status.[42] In order to resolve any potential confusion regarding the beneficial ownership identification and verification obligation of financial institutions, FinCEN is revising § 1010.230(b)(2) in the final rule to clarify that a covered financial institution may rely on the information supplied by the legal entity customer regarding the identity of its beneficial owner or owners, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information. FinCEN anticipates that, in the overwhelming majority of cases, a covered financial institution should be able to rely on the accuracy of the beneficial owner or owners identified by the legal entity customer, absent the institution's knowledge to the contrary. FinCEN recognizes the necessity for permitting reliance on the identification supplied by the legal entity customer, considering the fact the customer is generally the best source of this information, and that there is generally no other source of beneficial ownership information available to covered financial institutions, aside from the legal entity itself.

Several commenters sought clarification of the requirement as described in the NPRM in proposed § 1010.230(b)(2) that beneficial ownership information procedures be, at a minimum, "identical" to the existing CIP procedures for verifying the identity of individual customers. Some commenters noted that it would be infeasible to simply replicate, without modification, existing CIP procedures for individual customers to implement the beneficial ownership verification requirement. They noted, for example, that because the beneficial owners will in many cases not be physically present at the financial institution at account opening, an institution using documentary verification may not have access to the documents listed in the relevant paragraph of the CIP rule, and therefore may need to rely on a photocopy or other reproduction of such document. Commenters also noted that some current procedures for non-documentary verification of individual customers could not be applied to non-consenting beneficial owners, because of limitations on the use of credit reports imposed by the Fair Credit Reporting Act.[43]

FinCEN agrees that it would be impracticable for covered financial institutions to implement the beneficial ownership verification requirement with procedures that are identical to the institution's existing CIP rule procedures for individual customers. Accordingly, § 1010.230(b)(2) has been amended to require that at a minimum, these procedures must contain the elements[44] required for verifying the identity of customers that are individuals under paragraph (a)(2) of the applicable CIP rule,[45] but are not required to be identical. In addition, the final rule clarifies that in the case of documentary verification, the financial institution may use photocopies or other reproductions of the documents listed in paragraph (a)(2)(ii)(A)(*1*)[46] of the applicable CIP rule.

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[40] 12 U.S.C. 3401 *et seq.*

[41] 15 U.S.C. 6801 *et seq.*

[42] FinCEN stated that "[i]n light of these considerations, FinCEN is not proposing that financial institutions verify the *status* of a beneficial owner. Financial institutions may rely on the beneficial ownership information provided by the customer on the standard certification form." On the other hand, the proposal also states that its procedures for verifying beneficial ownership "should enable the financial institution to form a reasonable belief that it knows the true identity of the beneficial owner of each legal entity customer." (79 FR 45162)

[43] 15 U.S.C. 1681 *et seq.*

[44] The clause "in the covered financial institution's Customer Identification Program procedures" in the proposed rule text have been deleted, because, for the reasons described above, the verification procedures for beneficial owners of legal entity customers may be different from the procedures in the covered financial institution's CIP that apply to individual customers.

Because the risk-based verification procedures must contain the same elements as required by the applicable CIP rule to verify the identity of individual customers, verification must be completed within a reasonable time after the account is opened. In addition, the beneficial ownership identification procedures must address situations in which the financial institution cannot form a reasonable belief that it knows the true identity of the beneficial owner of a legal entity customer after following the required procedures.[47] It remains the case that covered financial institutions may generally rely on government-issued identification as verification of an individual's identity, absent obvious indications of fraud.[48] FinCEN notes that such reliance is also generally appropriate in the case of photocopies or other reproductions obtained pursuant to § 1010.230(b)(2). However, given the vulnerabilities inherent in the reproduction process, covered financial institutions should conduct their own risk-based analyses of the types of photocopies or reproductions that they will accept in accordance with this section, so that such reliance is reasonable. For example, a covered financial institution could determine that it will not accept reproductions below a certain optical resolution, or that it will not accept reproductions transmitted via facsimile, or that it will only accept digital reproductions transmitted in certain file formats. As with CIP, covered financial institutions are not required to maintain these copies or reproductions, but only a description of any document upon which the financial institution relied to verify the identity of the beneficial owner. We note, however, that although covered financial institutions are not required to maintain these reproductions, they are not prohibited from keeping them in a manner consistent with all other applicable laws or regulations.

Some commenters urged FinCEN to permit covered financial institutions to take a risk-based, rather than categorical, approach to the identification and verification requirements. Among the objections lodged against a categorical requirement were that: Conducting CIP procedures on non-present beneficial owners would be too difficult; the benefit of a categorical requirement was outweighed by the costs; and expanding the number of natural persons subject to CIP procedures would increase costs, particularly for institutions that rely upon vendors that charge on a *per capita* basis for CIP. FinCEN believes that categorical application of this requirement across covered financial institutions will reduce illicit actors' opportunities to slip into the financial system by masking their legal entities with markers indicative of a low risk profile. As to concerns about costs and difficulties, we believe that the above-described changes and clarifications made to this paragraph have given financial institutions greater flexibility in determining how to implement the identification and verification requirements, thereby reducing their impact. As described above, because financial institutions will in most instances be able to rely upon the information provided by the customer, FinCEN believes that financial institutions generally will not expend substantially greater resources by collecting and verifying the information in all cases (subject to permitted exemptions) than by engaging in a risk analysis to determine whether the beneficial ownership information should be collected and verified. We recognize that financial institutions that pay for systems and technology costs associated with CIP procedures on a *per capita* basis will face increased costs from identifying and verifying the identities of additional natural persons. However, we believe that the benefits of collecting this information, as described at greater length above and below, outweigh these additional costs. FinCEN accordingly declines to alter the categorical nature of the requirement for the final rule.

Several commenters questioned the utility of collecting this information in the absence of an authoritative centralized resource against which to verify beneficial ownership status. They contended that the limited benefit of this information would not outweigh the costs imposed by the requirement. Law enforcement commenters, however, identified significant benefits to the collection of beneficial ownership information, regardless of financial institutions' ability to verify ownership status. They noted that the identities of verified natural persons linked to legal entities of interest had significant value in law enforcement investigations, whether or not those natural persons are the actual beneficial owners, since at a minimum they may have information that can aid law enforcement in identifying the true beneficial owner(s). Furthermore, false beneficial ownership information is of significant use to prosecutors in demonstrating consciousness of guilt, as well as for impeachment purposes at trial. And law enforcement also noted the likely deterrent effect that a categorical collection and verification requirement would have on illicit actors, by making it more difficult for them to maintain anonymity while opening accounts. For these reasons, FinCEN rejects the notion that this requirement is of limited value.

A few commenters requested that FinCEN eliminate the verification requirement entirely, contending that verification of the identities of non-present beneficial owners would be too difficult and burdensome, especially for smaller institutions. As described above, we are aware of the challenges associated with verifying the identities of non-present individuals and have accordingly made changes to simplify the process for financial institutions, which we expect will reduce the burden. Importantly, collecting beneficial ownership information without verifying the existence of the named person would substantially diminish the value of the information, and we therefore decline to eliminate the verification requirement.

Some commenters asked FinCEN to clarify what we expect financial institutions to do with the beneficial ownership information that they collect and verify. FinCEN generally expects beneficial ownership information to be treated like CIP and related information, and accordingly used to ensure that covered financial institutions comply with other requirements. For example, the Office of Foreign Assets Control (OFAC) requires covered financial institutions to block accounts (or other property and interests in property) of, among others, persons appearing on the Specially Designated Nationals and Blocked Persons List (SDN List), which includes any entity that is 50 percent or more owned, in the aggregate, by one or more blocked persons, regardless of whether the entity is formally listed on the SDN List.[49] Therefore, institutions should use beneficial ownership information to help ensure that they do not open or maintain an account, or otherwise engage in prohibited transactions or dealings involving individuals or entities subject to OFAC-administered sanctions. Covered financial institutions should also develop risk-based procedures to determine whether and/or when additional screening of these names through, for example, negative media search programs, would be appropriate.

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[45] Paragraph (a)(2) of each of the CIP rules requires that the relevant financial institution's CIP includes risk-based procedures to verify the identity of each customer, to the extent reasonable and practicable. The elements of such program must include identifying the customer, verifying the customer's identity (through documents or non-documentary methods), and procedures for circumstances where the institution cannot form a reasonable belief that it knows the true identity of the individual.

[46] Relevant documentation may include unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport. *See, e.g.,* 31 CFR 1020.220(a)(2)(ii)(A)(*1*).

[47] Under the CIP rules, a financial institution's CIP must include procedures for responding to circumstances in which the financial institution cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe: (A) When the institution should not open an account; (B) The terms under which a customer may use an account while the institution attempts to verify the customer's identity; (C) When it should close an account, after attempts to verify a customer's identity have failed; and (D) When it should file a Suspicious Activity Report in accordance with applicable law and regulation. *See, e.g.,* 31 CFR 1020.220(a)(2)(iii).

[48] *See, e.g.,* Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks, 68 FR 25090, 25099 (May 9, 2003).

With respect to aggregation of transactions for Currency Transaction Reporting (CTR) purposes, FinCEN expects covered financial institutions to apply existing procedures consistent with CTR regulations and applicable FinCEN guidance from 2001 and 2012.[50] Thus, while financial institutions should generally recognize the distinctness of the corporate form and not categorically impute the activities or transactions of a legal entity customer to a beneficial owner, they must aggregate multiple currency transactions if the financial institution has knowledge that these transactions are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any one business day.[51] While the requirement to identify the beneficial owners of legal entity customers does not modify this existing CTR aggregation requirement, the beneficial ownership identification may provide financial institutions with information they did not previously have, in order to determine when transactions are "by or on behalf of" the same person. Thus, if a financial institution determines that a legal entity customer or customers are not being operated independently from each other or from their primary owner—*e.g.,* the institution determines that legal entities under common ownership have common employees and are repeatedly used to pay each other's expenses or the personal expenses of their primary owner—then the financial institution may determine that aggregating the transactions of a legal entity or entities and their primary owner would be appropriate.[52] Under such circumstances, if a financial institution were aware that a beneficial owner made a $5,000 cash deposit into his personal account, and later the same business day, he made a $6,000 cash deposit into the account of a legal entity not being operated as an independent entity, the institution would be required to aggregate those transactions and file a CTR.[53] And to the extent that the financial institution determined that such transactions had no other apparent purpose than to avoid triggering a CTR filing, the financial institution would need to consider whether filing a SAR about the transactions would be appropriate.

A few commenters asked FinCEN to provide guidance as to how beneficial ownership information should be incorporated into processes for information sharing pursuant to USA PATRIOT Act Section 314(a); one of these commenters asked FinCEN to declare such information *per se* outside of the scope of Section 314(a). FinCEN does not expect the information obtained pursuant to the beneficial ownership requirement to add additional requirements with respect to Section 314(a) for financial institutions. The rule implementing Section 314(a), set forth at 31 CFR 1010.520, does not authorize the reporting of beneficial ownership information associated with an account or transaction matching a named subject. Under that rule, financial institutions need only search their records for account or transactions matching a named subject, and report to FinCEN whether such a match exists using the identifying information that FinCEN provides.

Section 1010.230(c) Account. See discussion below under "Legal entity customer."

Section 1010.230(d) Beneficial Owner. In the NPRM, we proposed two prongs for the definition of beneficial owner: Each individual, if any, who directly or indirectly owned 25 percent of the equity interests of a legal entity customer (the ownership prong); and a single individual with significant responsibility to control, manage, or direct a legal entity customer, including an executive officer or senior manager or any other individual who regularly performs similar functions (the control prong). We noted that the number of beneficial owners identified would vary from legal entity customer to legal entity customer due to the ownership prong—there could be as few as zero and as many as four individuals who satisfy this prong. All legal entities, however, would be required to identify one beneficial owner under the control prong. We further noted that financial institutions had the discretion to identify additional beneficial owners as appropriate based on risk.

Thus, in practice, the number of beneficial owners identified will vary based on the circumstances. For example:

- Mr. and Mrs. Smith each hold a 50 percent equity interest in "Mom & Pop, LLC." Mrs. Smith is President of Mom & Pop, LLC and Mr. Smith is its Vice President. Mom & Pop, LLC is required to provide the personal information of both Mr. & Mrs. Smith under the ownership prong. Under the control prong, Mom & Pop, LLC is also required to provide the personal information of one individual with significant responsibility to control Mom & Pop, LLC; this individual could be either Mr. or Mrs. Smith, or a third person who otherwise satisfies the definition. Thus, in this scenario, Mom & Pop, LLC would be required to identify at least two, but up to three distinct individuals—both Mr. & Mrs. Smith under the ownership prong, and either Mr. or Mrs. Smith under the control prong, or both Mr. & Mrs. Smith under the ownership prong, and a third person with significant responsibility under the control prong.
- Acme, Inc. is a closely-held private corporation. John Roe holds a 35 percent equity stake; no other person holds a 25 percent or higher equity stake. Jane Doe is the President and Chief Executive Officer. Acme, Inc. would be required to provide John Roe's beneficial ownership information under the ownership prong, as well as Jane Doe's (or that of another control person) under the control prong.
- Quentin, Inc. is owned by the five Quentin siblings, each of whom holds a 20 percent equity stake. Its President is Benton Quentin, the eldest sibling, who

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[49] *See generally* 31 CFR part 500; *see also, e.g.,* 31 CFR 590.406 (Ukraine-related sanctions regulations); Office of Foreign Assets Control, *Frequently Asked Questions, available at http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#50_percent.*

[50] *See* 31 CFR 1010.313; FinCEN, *Currency Transaction Report Aggregation for Businesses with Common Ownership* FIN–2012–G001, (Mar. 16, 2012) (FIN–2012–G001); FinCEN, *Currency Transaction Reporting: Aggregation,* FinCEN Ruling 2001–2, (Aug. 23, 2001).

[51] 31 CFR 1010.313.

[52] In general, such aggregation would only be appropriate in cases where an individual owns all or substantially all of the legal entity's equity interests. It is only in such cases that a transaction by a legal entity could be considered "by or on behalf of" the owner of the entity (or vice versa).

[53] *See* FIN–2012–G001 at 2.

is the only individual at Quentin, Inc. with significant management responsibility. Quentin, Inc. would be required to provide Benton Quentin's beneficial ownership information under the control prong, but no other beneficial ownership information under the ownership prong, because no sibling has a 25 percent stake or greater.

One commenter raised a concern that this obligation would effectively require financial institutions to monitor the equity interests and management team of legal entity customers on an ongoing basis and continually update this information. FinCEN notes that it would be impracticable for financial institutions to conduct this type of inquiry, and emphasizes that this obligation should be considered a snapshot, not a continuous obligation. As discussed more fully in the Section-by-Section Analysis addressing the amendments to the AML program rules, FinCEN does expect financial institutions to update this information based on risk, generally triggered by a financial institution learning through its normal monitoring of facts relevant to assessing the risk posed by the customer.

The Ownership Prong. Commenters raised a number of points regarding the ownership prong. Several commenters speculated on FinCEN's intention with respect to this requirement. FinCEN confirms here that by the phrase "directly or indirectly," it intends that the financial institution's customer identify its ultimate beneficial owner or owners as defined in the rule and not their nominees or "straw men." In addition, as described in § 1010.230(b)(2), financial institutions may rely on information provided by the customer to identify and verify the beneficial owner.

Many commenters supported FinCEN's decision in the proposal to set the minimum threshold for equity holdings constituting ownership at 25 percent. Some of these commenters requested that FinCEN affirm this threshold as the regulatory expectation, notwithstanding our remarks in the proposal that financial institutions, after their own assessment of risk, could determine that a lower threshold percentage might be warranted. A few commenters, however, urged FinCEN to lower this threshold to 10 percent, contending that the higher threshold would be too easy to evade and is inconsistent with international AML norms and requirements of FATCA, and that the burden of a lower threshold would be minimal because some financial institutions as a matter of practice already collect beneficial ownership information at thresholds lower than 25 percent.

FinCEN has considered all of the arguments in favor of lowering the ownership threshold to 10 percent, and we decline to make this change in the final rule. Although it is true that some financial institutions already collect beneficial ownership information at a threshold lower than 25 percent in some cases, we do not believe that this practice is widely established enough to justify its categorical imposition for all legal entity customers across all covered financial institutions. As some proponents of the 10 percent threshold noted, this lower threshold would make it more difficult for illicit actors to structure ownership interests to evade the reporting threshold. However, it would also require financial institutions to identify and verify as many as eleven beneficial owners (including the control prong). In FinCEN's assessment, the incremental benefit of this approach does not outweigh the burdens associated with having to collect and verify the identities of more than twice as many beneficial owners in some circumstances. Furthermore, the proposed 25 percent threshold is consistent with that of many foreign jurisdictions (including EU member states) and with the FATF standard, which in turn is used to define the controlling persons of an entity in the intergovernmental agreements that the United States has entered into with more than 110 other jurisdictions in order to enforce the requirements of FATCA. FinCEN continues to believe that a 25 percent threshold strikes the appropriate balance between the benefit of identifying key natural persons who have substantial ownership interests in the legal entity and the costs associated with implementing this information-collection requirement.

We reiterate that the 25 percent threshold is the baseline regulatory benchmark, but that covered financial institutions may establish a lower percentage threshold for beneficial ownership (*i.e.*, one that regards owners of less than 25 percent of equity interests as beneficial owners) based on their own assessment of risk in appropriate circumstances. As a general matter, FinCEN does not expect covered financial institutions' compliance with this regulatory requirement to be assessed against a lower threshold. Nevertheless, consistent with the risk-based approach, FinCEN anticipates that some financial institutions may determine that they should identify and verify beneficial owners at a lower threshold in some circumstances; we believe that making this clear in the note accompanying the regulatory text will aid them in doing so with respect to their customers.

Some commenters urged FinCEN to include in the ownership prong a "fallback provision" to require the collection of beneficial ownership information for at least one individual with a significant equity stake in the legal entity, even if no beneficial owner meets the minimum ownership threshold. Such a provision was initially discussed in the ANPRM for this rulemaking but not included in the NPRM in response to concerns expressed by numerous commenters that the approach was impracticable. As we noted in the NPRM, commenters questioned the feasibility of engaging in a comparative analysis of every owner to determine the individual who "has at least as great an equity interest in the entity as any other individual." Agreeing with that assessment, we removed this provision, and we do not believe that any benefit from its reintroduction would outweigh the difficulties that customers and front-line employees would face in implementing it. Although we have declined to include this provision in the final rule, financial institutions may determine, pursuant to a risk-based approach for their institutions, that certain higher risk circumstances may warrant the collection of beneficial ownership information for at least one natural person under the ownership prong even if no beneficial owner meets the 25 percent threshold.

One commenter requested that FinCEN clarify whether covered financial institutions had an obligation to determine whether equity holders of a legal entity managed or structured their holdings to evade the 25 percent threshold for reporting. FinCEN notes that in most cases it would be impracticable for front-line employees to conduct this type of inquiry. Thus, FinCEN expects that financial institutions will generally be able to rely upon information about equity ownership provided by the person opening the account, and not to affirmatively investigate whether equity holders are attempting to avoid the reporting threshold. However, financial institution staff who know, suspect, or have reason to suspect that such behavior is occurring may, depending on the circumstances, be required to file a SAR.

A few commenters sought clarification of the definition of "equity interests" provided in the proposal—to wit, an ownership interest in a business entity—contending that although the proposed definition provided a great deal of latitude and flexibility, it might also cause confusion due to its broad sweep. Thus, commenters requested greater clarification and guidance in the form of examples or additional commentary, to assist customers in understanding and complying with the requirements of the regulation as well as employees in their determinations as to which types of ownership interests are subject to this prong. FinCEN appreciates that some financial institutions may find it challenging in some circumstances to determine whether a particular ownership interest qualifies as an "equity interest." However, as we noted in the proposal, we deliberately avoided the use of more technical terms of art associated with the exercise of control through ownership; we did so in part based on the preferences expressed by many members of industry. The above-mentioned commenters urged FinCEN to avoid creating a definition using technical and complex legal terms that would also be difficult for customers and front-line employees to understand and apply. Beyond the general examples provided in the proposal, however, we are reluctant to provide additional narrower examples that could be construed to limit a definition that we intend to be broadly applicable, particularly in light of the diversity of types of legal entities formed within the United States and abroad. By the same token, we also decline to provide a formal guidance document listing the types of documents that front-line employees should rely upon to demonstrate the existence of an equity interest over the triggering threshold. We reiterate that it is generally the responsibility of the legal entity customer (and its personnel) to make this determination and to identify the beneficial owners, and not front-line employees at the financial institution, unless the employees have reason to question the accuracy of the information presented.

Some commenters noted that while they approved of FinCEN's general approach to determining indirect ownership of legal entity customers—*i.e.,* that FinCEN does not expect financial institutions or customers to undertake analyses to determine whether an individual is a beneficial owner under the definition—they nevertheless thought that FinCEN should provide additional guidance and examples of how legal entity customers should calculate ownership interests when natural persons have indirect equity interests. As an initial matter, as described above, we emphasize that FinCEN expects that financial institutions will generally be able to rely on the representations of the customer when it identifies its beneficial owners. We also note that it would not be unreasonable to expect that a legal entity that has a complex structure would have personnel who necessarily have a general understanding of the ownership interests of the natural persons behind it for operational, management, accounting, and other purposes.

Commenters also sought clarification regarding various scenarios where 25 percent or greater equity interests of a legal entity customer are held in such a manner that the interest is not ultimately owned, directly or indirectly, by any individual. This could occur, for example, where a 25 percent or greater ownership interest is held by an entity excluded from the legal entity customer definition under paragraph (e)(2) or by a trust. FinCEN notes that the exclusions in the proposed rule include any entity organized under the laws of the United States or of any State at least 51 percent of whose common stock or analogous equity interests are held by an entity listed on a U.S stock exchange. FinCEN believes that this should address the overwhelming majority of situations where an excluded entity is a 25 percent or more shareholder. In addition, in the relatively unusual situations where an excluded entity holds a 25 percent or greater equity interest that is not covered by the above-mentioned exclusion, FinCEN notes that covered financial institutions are not required under the ownership prong to identify and verify the identities of a natural person behind these entities; this is because the definition of "beneficial owner" under the ownership prong refers to "[e]ach individual, *if any,* . . .", and in such a case there would not be any individual who is the ultimate owner of such interest. On the other hand, where 25 percent or more of the equity interests of a legal entity customer are owned by a trust (other than a statutory trust), covered financial institutions would satisfy the ownership prong of the beneficial ownership requirement by collecting and verifying the identity of the trustee, and FinCEN has amended the definition consistent with this. For clarity, FinCEN notes that in any such case the legal entity customer would nonetheless be required to identify an individual under the control prong.

The Control Prong. Commenters also raised a variety of points regarding this element.

A few commenters requested that we narrow or eliminate the control prong, contending that it would be difficult to identify a control person under such a wide-ranging definition. We disagree. FinCEN proposed a broad definition to give legal entities a wide range of options from which to choose. Accordingly, the breadth of the definition will facilitate, rather than hinder, financial institutions' ability to collect this information—because legal entity customers are required to provide information on only one control person who satisfies the definition, legal entities should be able to readily identify at least one natural person within their management structure who has significant management responsibility, consistent with the multiple examples of positions provided. Furthermore, there may be legal entities for which there are no natural persons who satisfy the ownership prong; without the control prong, this would create a loophole for legal entities seeking to obscure their beneficial ownership information. Requiring the identification and verification of, at a minimum, one control person ensures that financial institutions will have a record of at least one natural person associated with the legal entity, which will benefit law enforcement and regulatory investigations for reasons described previously.

A few commenters requested that FinCEN provide additional information about the types of persons who would satisfy the control prong, contending that a level of detail similar to the explanations provided for the ownership prong would be helpful for implementation. We believe that such additional explanation is unnecessary. In contrast with the variety of possible complicated scenarios that a financial institution might encounter when trying to determine beneficial ownership under the ownership prong, the control prong provides for a straightforward test: The legal entity customer must provide identifying information for one person with significant managerial control. It further provides as examples a number of common, well-understood senior job titles, such as President, Chief Executive Officer, and others. Taken together, FinCEN believes that these clauses provide ample information for legal entity customers to easily identify a natural person that satisfies the definition of control person.

A few commenters requested that FinCEN expand the reach of the control prong by, among other things, including within it the concept of "effective control," and proposing a variety of changes to mandate the identification of additional natural persons under this prong, from all persons who exercise executive management and leadership, to all senior officials and all those who exercise effective control over a legal entity. FinCEN declines to make any of these changes to the control prong. While we recognize that our definition does not encapsulate all possible concepts of control, including effective control, we believe that our definition strikes the appropriate balance between including sufficiently senior leadership positions and practicability. As one of the proponents of including effective control conceded, effective control can be "difficult to determine." We sought in our proposal to provide an easily administrable definition to facilitate collection of this information for both legal entities and financial institutions. As to the identification of additional natural persons, we believe that the challenges associated with identifying and verifying additional natural persons outweigh any incremental benefit of the information.

Section 1010.230(e) Legal Entity Customer. As proposed, this paragraph defined the term "legal entity customer" and delineated a series of exclusions from this definition.

Section 1010.230(e)(1). In the proposed rule, we to defined "legal entity customer" to mean a corporation, limited liability company, partnership or other similar business entity (whether formed under the laws of a state or of the United States or a foreign jurisdiction) that opens a new account. Many commenters raised questions about what entities and other businesses would be covered and requested that the proposed definition be clarified, particularly the meaning of "other similar business entity." Some commenters urged us to include other business forms, such as unincorporated associations and sole proprietorships, within the definition of legal entity customer.

We agree that covered institutions would benefit from a revised definition that further clarifies the entities that fall within the definition of "legal entity customer." Thus, for the purposes of the final rule, we state that a legal entity customer means a corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction, that opens an account. This means that "legal entity customer" would include, in addition to corporations and limited liability companies, limited partnerships, business trusts that are created by a filing with a state office, any other entity created in this manner, and general partnerships. (It would also include similar entities formed under the laws of other countries.) It would not include, for example, sole proprietorships or unincorporated associations even though such businesses may file with the Secretary of State in order to, for example, register a trade name or establish a tax account. This is because neither a sole proprietorship nor an unincorporated association is an entity with legal existence separate from the associated individual or individuals that in effect creates a shield permitting an individual to obscure his or her identity.[54] The definition of "legal entity customer" also does not include natural persons opening accounts on their own behalf. In the final rule, we remove the reference to a "new" account to eliminate redundancies with other paragraphs of this provision, and because this account status is not a relevant characteristic for defining a legal entity customer.

Trusts

The definition would also not include trusts (other than statutory trusts created by a filing with a Secretary of State or similar office). This is because, unlike the legal entities that are subject to the final rule, a trust is a contractual arrangement between the person who provides the funds or other assets and specifies the terms (*i.e.*, the grantor or settlor) and the person with control over the assets (*i.e.*, the trustee), for the benefit of those named in the trust deed (*i.e.*, the beneficiaries). Formation of a trust does not generally require any action by the state. As FinCEN noted in the NPRM, identifying a "beneficial owner" from among these parties, based on the definition in the proposed or final rule, would not be possible.

FinCEN emphasizes that this does not and should not supersede existing obligations and practices regarding trusts generally. The preamble to each of the CIP rules notes that, while financial institutions are not required to look through a trust to its beneficiaries, they "may need to take additional steps to verify the identity of a customer that is not an individual, such as obtaining information about persons with control over the account." [55] Moreover, as FinCEN noted in the proposal, it is our understanding that where trusts are direct customers of financial institutions, financial institutions generally also identify and verify the identity of trustees, because trustees will necessarily be signatories on trust accounts (which in turn provides a ready source of information for law enforcement in the event of an investigation). Furthermore, under supervisory guidance for banks, "in certain circumstances involving revocable trusts, the bank may need to gather information about the settlor, grantor, trustee, or other persons with the authority to direct the trustee, and who thus have authority or control over the account, in order to establish the true identity of the customer." [56] We reiterate our understanding that, consistent with existing obligations, financial institutions are already taking a risk-based approach to collecting information with respect to various persons associated with trusts in order to know their customer,[57] and that we expect financial institutions to continue these practices as part of their overall efforts to safeguard against money laundering and terrorist financing.[58]

"Account" Definition

FinCEN also notes that a legal entity customer is defined as one that opens an account, but that the NPRM did not define the term "account." Several commenters requested that FinCEN provide a definition for this term and suggested using the definition from the CIP rules. In order to maintain consistency with the CIP rules, FinCEN is adding to the final rule the definition of the term "account" that is found in the CIP rules,[59] which by its terms excludes an account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974. This added provision is not only consistent with CIP but also appropriate for the final rule, inasmuch as accounts established to enable employees to participate in retirement plans established under ERISA are of extremely low money laundering risk.

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[54] FinCEN notes that this is consistent with the CIP rules, which include as a customer "an individual who opens a new account for . . . (B) an entity that is not a legal person, such as a civic club." In such a case, the individual opening the account, rather than the civic club, is the customer. *See, e.g.*, 31 CFR 1020.100(c)(1)(ii)(B).

[55] *See, e.g.*, "Customer Identification Programs for Broker-Dealers," 68 FR at 25116 n.32. (May 9, 2003).

[56] Federal Financial Institutions Examination Council, *Bank Secrecy Act/Anti-Money Laundering Examination Manual* 281 (2014) (FFIEC Manual).

[57] FinCEN also understands that in order to engage in the business of acting as a trustee, it is necessary for a trust company to be Federally- or State-chartered. Such entities are subject to BSA obligations, which reduces the AML risk of such trusts.

[58] Also not covered by the final rule are accounts in the name of a deceased individual opened by a court-appointed representative of the deceased's estate.

[59] *See, e.g.*, 31 CFR 1020.100(a)(2) (for banks); 1023.100(a)(2) (for brokers or dealers in securities); 1024.100(a)(2) (for mutual funds); and 1026.100(a)(2) (for futures commission merchants or introducing brokers in commodities).

In this regard, commenters requested that FinCEN broaden the exemption for ERISA plans to include other non-ERISA retirement plans, based on their low risk of money laundering. FinCEN notes that in the case of such non-ERISA plans, the customer would generally either be the trust established to maintain the assets, or the employer that contracts with the financial institution to establish the account, and not the underlying participants in or beneficiaries of the account.[60] Accordingly, in the case where the customer would be the employer and such employer is a legal entity, the financial institution would be required to obtain the beneficial owners of the legal entity employer (unless such employer is otherwise excluded from the definition of legal entity customer). We address other requests for exemptions from the beneficial ownership requirement in the discussion of § 1010.230(h) below.

Paragraph (c) of § 1010.230 of the final rule will accordingly read as set out in the regulatory text at the end of this document.

Section 1010.230(e)(2). The NPRM proposed ten exclusions from the legal entity customer definition. The first two categories are also for the most part excluded from the requirements of the CIP rules. The final rule adopts all of those proposed exclusions, except as discussed below under the heading, Charities and Nonprofit Entities. The final rule also adds a number of other exclusions in response to comments. All of the exclusions are a result of an assessment of the risks and determination that beneficial ownership information need not be obtained at account opening, because the information is generally available from other credible sources:

A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator—1010.230(e)(2)(i)

These entities are excluded because they are subject to Federal or State regulation and information regarding their beneficial ownership and management is available from the relevant Federal or State agencies.

A person described in § 1020.315(b)(2) through (5) of this chapter—§ 1010.230(e)(2)(ii)

This includes the following:

- *A department or agency of the United States, of any State, or of any political subdivision of a State.* FinCEN has determined that this category is appropriate for exclusion because such entities have no equity owners and information regarding their management is readily available from public sources.
- *Any entity established under the laws of the United States, of any State, or of any political subdivision of any State, or under an interstate compact between two or more States, that exercises governmental authority on behalf of the United States or of any such State or political subdivision.* This category is also appropriate for exclusion due to the amount of ownership and management information that is publicly available about such entities.
- *Any entity (other than a bank) whose common stock or analogous equity interests are listed on the New York, American,[61] or NASDAQ stock exchange.* This exclusion is appropriate because such entities are required to publicly disclose the beneficial owners of five percent or more of each class of the issuer's voting securities in periodic filings with the SEC, to the extent the information is known to the issuer or can be ascertained from public filings.[62] In addition, beneficial owners of these issuers' securities may be subject to additional reporting requirements.[63]
- *Any entity organized under the laws of the United States or of any State at least 51 percent of whose common stock or analogous equity interests are held by a listed entity.* Because such subsidiaries of listed entities are controlled by their parent listed entity, information regarding control and management is publicly available.

An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 or that is required to file reports under section 15(d) of that Act[64]—§ 1010.230(e)(2)(iii)

These issuers are excluded because they are required to publicly disclose the beneficial owners of five percent or more of each class of the issuer's voting securities in periodic filings with the SEC, to the extent the information is known to the issuer or can be ascertained from public filings.[65] In addition, beneficial owners of the issuer's securities may be subject to additional reporting requirements.[66]

An investment company, as defined in Section 3 of the Investment Company Act of 1940, that is registered with the SEC under that Act—§ 1010.230(e)(2)(iv)

An investment adviser, as defined in section 202(a)(11) of the Investment Advisers Act of 1940, that is registered with the SEC under that Act—§ 1010.230(e)(2)(v)

These entities are excluded because registered investment companies and registered investment advisers already publicly report beneficial ownership in their filings with the SEC.[67]

An exchange or clearing agency, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 6 or 17A of that Act—§ 1010.230(e)(2)(vi)

Any other entity registered with the SEC under the Securities and Exchange Act of 1934—§ 1010.230(e)(2)(vii)

These entities are excluded because the SEC registration process requires disclosure and regular updating of information about beneficial owners of those entities, as well as senior management and other control persons.

A registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant, each as defined in section 1a of the Commodity Exchange Act, that is registered with the CFTC—§ 1010.230(e)(2)(viii)

These entities are excluded because the CFTC registration process requires disclosure and regular updating of information about beneficial owners of those entities, as well as senior management and other control persons.

A public accounting firm registered under section 102 of the Sarbanes-Oxley Act—§ 1010.230(e)(2)(ix)

Such firms are those that audit publicly traded companies and SEC-registered broker-dealers. These firms are required to register with the Public Company Accounting Oversight Board

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[60] *See* FinCEN *et al., Interagency Interpretive Guidance on Customer Identification Program Requirements under Section 326 of the USA PATRIOT Act, FAQs: Final CIP Rule* 6 April 28, 2005, page 6, *available at http://www.fincen.gov/statutes_regs/guidance/pdf/faqsfinalciprule.pdf.*

[61] Currently called NYSE MKT.

[62] *See, e.g.,* Item 12 of Form 10–K and Item 403 of Regulation S–K.

[63] *See* Securities Exchange Act section 13(d) and Rules 13d–1 to 13d–102; Securities Exchange Act § 16(a) and Rules 16a–1 through 16a–13.

[64] *See* Securities Exchange Act section 16(a) and Rules 16a–1 through 16a–13 and Item 403 of Regulation S–K.

[65] *See, e.g.,* Item 12 of Form 10–K and Item 403 of Regulation S–K.

[66] *See* Securities Exchange Act section 13(d) and Rules 13d–1 to 13d–102; Securities Exchange Act § 16(a) and Rules 16a–1 through 16a–13.

[67] *See, e.g.,* Item 17 of Form N–1A and Schedule A to Part 1A of Form ADV.

(PCAOB), a nonprofit corporation established by Congress to oversee the audits of publicly traded companies, and are required to file annual and special reports with the PCAOB. In addition, States require public accounting firms to register and to file annual reports identifying their members (*e.g.*, partners, members, or shareholders).[68] Such information is often available online.

Many commenters also urged that the proposed exclusions from the legal entity customer definition be expanded or clarified in certain respects. These include, among others, exclusions for accounts for employee benefit plans (addressed above), additional entities regulated by the United States or States of the United States, foreign governments and agencies, foreign financial institutions, and nonprofits. Commenters also sought clarity on how certain types of entities and relationships should be treated.

Additional Regulated Entities

A bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), or savings and loan holding company, as defined in section 10(n) of the Home Owners' Loan Act (12 U.S.C. 1467a(n))—§ 1010.230(e)(2)(x)

At the suggestion of several commenters, bank holding companies, which include financial holding companies, have been excluded from the beneficial ownership requirement in the final rule because the Federal Reserve Board maintains beneficial ownership information on all of these companies. Savings and loan holding companies are excluded for the same reason.

A pooled investment vehicle that is operated or advised by a financial institution excluded under this paragraph—§ 1010.230(e)(2)(xi)

In response to several commenters who noted that beneficial ownership information would be available regarding the operator or adviser of such pooled vehicles, FinCEN has determined that the pooled vehicle should also be excluded from this requirement.

An insurance company that is regulated by a State—§ 1010.230(e)(2)(xii)

A few commenters sought exclusion of insurance companies from the definition of legal entity customer, with the requested exclusions ranging in scope from all insurance companies subject to an AML program requirement and all insurance companies regulated by a State of the United States, to those insurance companies that own or control an SEC registered broker-dealer or SEC registered investment adviser. We address these proposals in turn.

The commenters who proposed to exclude all insurance companies subject to an AML program requirement and all State-regulated insurance companies did not directly proffer a rationale for their request. We presume that the commenters believe that insurance companies subject to an AML program requirement and to State regulation present a lower risk profile, and should therefore be excluded. As to insurance companies subject to an AML program requirement, such status alone does not require insurance companies to disclose beneficial ownership information to their supervisors. Accordingly, an exclusion on that basis would not be warranted. With respect to insurance companies regulated by a State of the United States, these companies must disclose and regularly update their beneficial owners, as well the identities of senior management and other control persons. For insurance firms that are a part of a publicly traded group, such disclosures would also be found in annual SEC filings. All State-regulated insurance companies are required to file an Annual Statement with their State regulators, identifying senior management, directors, and trustees. Schedule Y of this Statement shows the firm's corporate structure, including direct and indirect parents and subsidiaries of the insurer. Form B, an annual registration statement filed with state regulators, shows the executive officers, directors, and controlling shareholders of insurance companies. In the case of mutual insurance companies, which do not issue equity and are instead owned as a whole by their policyholders, Form B nevertheless shows their executive officers and directors. For these reasons, we believe an exclusion for State-regulated insurance companies is appropriate, and we have accordingly added to the final rule an exclusion for an insurance company that is regulated by a State as paragraph (e)(2)(xii).[69]

Some commenters also sought an exclusion for insurance companies that own or control an SEC registered broker-dealer or SEC registered investment adviser, noting that their registration with the SEC results in the disclosure of all individuals and entities in the indirect chain of ownership of the broker-dealer or adviser with an ownership interest of 25 percent or more. FinCEN understands that in the vast majority of cases, an insurance company that owns or controls a registered broker-dealer or investment advisor would also be regulated by a State. Accordingly, FinCEN believes that this additional exclusion would be redundant.

A financial market utility designated by the Financial Stability Oversight Council under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010—§ 1010.230(e)(2)(xiii)

One commenter requested that FinCEN exclude designated financial market utilities from the definition of legal entity customer, noting that such entities are already subject to extensive regulation. FinCEN understands that entities designated as financial market utilities by the Financial Stability Oversight Council pursuant to Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 are subject to extensive supervision and oversight by their Federal functional regulators, including the disclosure of beneficial ownership information. Accordingly, FinCEN believes that it is appropriate to exclude them from the definition.

Excluded Foreign Entities

A foreign financial institution established in a jurisdiction where the regulator of such institution maintains beneficial ownership information regarding such institution—§ 1010.230(e)(2)(xiv)

Numerous commenters urged FinCEN to broaden the proposed exemptions for regulated financial institutions and publicly traded companies in the United States to include their counterparts outside of the United States. With regard to regulated foreign financial institutions, some commenters noted that in the rules implementing section 312 of the USA PATRIOT Act, even in the case of foreign banks subject to enhanced due diligence, a U.S. bank need obtain ownership information only if such foreign banks are not publicly traded,[70] and that it would be inconsistent to impose a more burdensome requirement in the case of correspondent accounts for foreign banks (and arguably other foreign financial institutions) that are not subject to enhanced due diligence. FinCEN agrees with this analysis and has broadened the exclusions to the definition of legal entity customer in the final rule to include foreign financial institutions established in jurisdictions where the regulator of such institution maintains beneficial ownership information regarding such institution. As with other exclusions described above, FinCEN has determined that it is appropriate to exclude these entities, because information regarding their beneficial ownership and management is available from the relevant foreign regulator.

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[68] *See, e.g.*, New York State Education Law, Article 149, Section 7408.3.

[69] Because "State" is defined in 31 CFR 1010.100(vv), we have not included "of the United States" in the rule text.

[70] 31 CFR 1010.610(b)(3).

A non-U.S. governmental department, agency or political subdivision that engages only in governmental rather than commercial activities—§ 1010.230(e)(2)(xv)

Commenters also requested that certain departments, agencies, and political subdivisions of non-U.S. governments, as well as State-owned enterprises and supranational organizations, should also be exempt from the beneficial ownership requirement. The commenters pointed out that no such customers would have beneficial owners under the ownership prong, and any individual identified under the control prong would in most cases not be in the United States, which would make verification of identity more difficult. We agree that certain departments, agencies, and political subdivisions of non-U.S. governments—specifically, those that engage only in governmental (and not commercial) activities—should not fall within the definition of legal entity customer, and should therefore be excluded from the requirement. Although this delineation between governmental and commercial activities arises out of well-recognized principles of sovereign immunity, FinCEN does not expect front-line employees of covered financial institutions to engage in any type of legal analysis to determine the applicability of this exclusion. Rather, FinCEN expects covered financial institutions to rely upon the representations of such customers, absent knowledge to the contrary.

Some commenters also requested an exclusion for supranational organizations. FinCEN is not aware of a well-established, widely accepted definition of this term that could serve to clearly notify such entities of their eligibility to be excluded from this requirement. Because of the administrative challenges associated with determining such eligibility in the absence of a clear line, FinCEN declines to include such an exclusion in the final rule. We recognize that many such organizations would generally lack equity interests (and accordingly, equity stakes); thus, as in the case of other legal entities lacking such interests, financial institutions would be expected to collect beneficial ownership information under the control prong only.

Any legal entity only to the extent that it opens a private banking account subject to 31 CFR 1010.620—§ 1010.230(e)(2)(xvi)

A number of commenters requested that FinCEN clarify the treatment of beneficial owners of private banking accounts for non-U.S. persons that are subject to FinCEN's private banking account rule,[71] which requires financial institutions maintaining such accounts to ascertain the identity of all beneficial owners of such accounts, but utilizes a different definition.[72] Because covered financial institutions have established a process for complying with the private banking account regulation, FinCEN has determined that it is appropriate to exclude such legal entity customers from the beneficial ownership requirement only when they establish such accounts.

Nonexcluded Pooled Investment Vehicles

In the proposal, FinCEN sought comment on the approach that it should take towards pooled investment vehicles that are operated or advised by financial institutions that are not proposed to be excluded from the definition of legal entity customer, *i.e.*, whether they should also be excluded from this requirement, or, if such vehicles are not excluded, whether covered financial institutions should be required to identify beneficial owners of such vehicles only under the control prong of the beneficial ownership definition. We noted that such entities often have ownership interests that fluctuate, and that identifying beneficial owners of these entities based on a percentage ownership threshold accordingly might create unreasonable operational challenges to collect information that would only be accurate for a limited period of time.

Some commenters requested that FinCEN exclude such pooled investment vehicles from the beneficial ownership requirement for several reasons, including the logistical difficulties of maintaining the information and possible limited duration of the accuracy of the information noted above. The commenters requested that, if such vehicles are not excluded, then FinCEN should require those financial institutions to collect beneficial ownership information of such entities under the control prong only. FinCEN agrees that, because of the limited utility and difficulty of collecting beneficial ownership information under the ownership prong, in the case of pooled investment vehicles whose operators or advisers are not excluded from this definition, such as non-U.S. managed mutual funds, hedge funds, and private equity funds, financial institutions would be required to collect beneficial ownership information under the control prong only (*e.g.*, an individual with significant responsibility to control, manage, or direct the operator, adviser, or general partner of the vehicle). This treatment of nonexcluded pooled investment vehicles is reflected in the final rule in § 1010.230(e)(3)(i).

Intermediated Account Relationships

In the NPRM, we proposed that if an intermediary is the customer, and the financial institution has no CIP obligation with respect to the intermediary's underlying clients pursuant to existing guidance, a financial institution should treat the intermediary, and not the intermediary's underlying clients, as its legal entity customer. Thus, existing guidance issued jointly by Treasury or FinCEN and any of the Federal functional regulators for broker-dealers, mutual funds, and the futures industry related to intermediated relationships would apply.[73] Commenters from the securities, mutual fund, and futures industries strongly supported this approach. FinCEN confirms that this principle will apply in interpreting the final rule, as follows: To the extent that existing guidance provides that, for purposes of the CIP rules, a financial institution shall treat an intermediary (and not the intermediary's customers) as its customer, the financial institution should treat the intermediary as its customer for purposes of this final rule. FinCEN also confirms that other guidance issued jointly by FinCEN and one or more Federal functional regulators relating to the application of the CIP rule will apply to this final rule, to the extent relevant.[74]

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[71] 31 CFR 1010.620.

[72] 31 CFR 1010.605(a).

[73] *See, e.g.*, Guidance from the Staffs of the Department of the Treasury and the U.S. Securities and Exchange Commission, *Questions and Answers Regarding the Mutual Fund Customer Identification Rule*, August 11, 2003, *available at https://www.sec.gov/divisions/investment/guidance/qamutualfund.htm.;* Guidance from the Staffs of the Department of the Treasury and the U.S. Securities and Exchange Commission, *Question and Answer Regarding the Broker-Dealer Customer Identification Program Rule* (31 CFR 103.122) (October 1, 2003), *available at http://www.fincen.gov/statutes_regs/guidance/html/20031001.html;* Guidance from the Staffs of the Department of the Treasury and the U.S. Commodity Futures Trading Commission, *Frequently Asked Question regarding Customer Identification Programs for Futures Commission Merchants and Introducing Brokers* (31 CFR 103.123), *available at http://www.fincen.gov/statutes_regs/guidance/html/futures_omnibus_account_qa_final.html;* FinCEN, *Application of the Regulations Requiring Special Due Diligence Programs for Certain Foreign Accounts to the Securities and Futures Industries*, FIN–2006–G009 (May 10, 2006), *available at http://www.fincen.gov/statutes_regs/guidance/html/312securities_futures_guidance.html.*

One commenter representing the legal profession requested that escrow accounts established by lawyers to keep their clients' funds in trust be given the same treatment, due to lawyers' professional obligations to maintain client confidentiality under State law and codes of professional conduct. This commenter proposed that in the case of such accounts, only the lawyers and law firms establishing these accounts would be deemed legal entity customers from which beneficial ownership information would be collected. FinCEN understands that many attorneys maintain client trust or escrow accounts containing funds from multiple clients and other third parties in a single account. Funds flow in and out of these accounts during the normal course of business, and while these movements may not be as frequent as those found in, for example, pooled accounts in the securities and futures industries, they nevertheless create significant operational challenges to collecting this information with reference to the relevant clients and third parties. As in the case of nonexcluded pooled investment vehicles, FinCEN believes that it would be unreasonable to impose such collection obligations for information that would likely be accurate only for a limited period of time. FinCEN also understands that State bar associations impose extensive recordkeeping requirements upon attorneys with respect to such accounts, generally including, among other things, records tracking each deposit and withdrawal, including the source of funds, recipient of funds, and purpose of payment; copies of statements to clients or other persons showing disbursements to them or on their behalf; and bank statements and deposit receipts.[75] For these reasons, FinCEN believes that attorney escrow and client trust accounts should be treated like other intermediated accounts described above, and we accordingly deem such escrow accounts intermediated accounts for purposes of the beneficial ownership requirement.

Charities and Nonprofit Entities

In the NPRM, we proposed an exclusion from the definition of "legal entity customer" for charities and nonprofit entities that are described in sections 501(c), 527, or 4947(a)(1) of the Internal Revenue Code of 1986, which have not been denied tax exempt status, and which are required to and have filed the most recently due annual information return with the Internal Revenue Service.

Commenters raised a number of issues with this proposed exemption. These include the fact that, in order to qualify for the exemption, the financial institution would effectively need to verify each of the following:

1. That the customer qualifies for an exemption under one of the three listed sections of the Internal Revenue Code, which would likely require that the financial institution review the entity's IRS documentation;
2. That the exemption has not been revoked;
3. That the entity is required to file an annual information return; and
4. That the entity has in fact filed such return.

Commenters expressed concerns that these steps to verify a charitable organization's eligibility for the exemption would be unduly burdensome and difficult for frontline staff to administer. Several commenters asked whether the financial institution could utilize the IRS's search tool that enables taxpayers to confirm the tax exempt status of organizations, "EO Select Check," in order to verify the necessary information; others noted that, while this Web site confirms the tax exempt status of organizations, it does not confirm that the organization has filed its most recently due return. Moreover, up-to-date information, particularly regarding a recently formed organization, may not be available. Commenters noted further that, unless these issues can be addressed in a way that would facilitate the use of the exclusion, it would in many cases be simpler to ignore the exclusion and obtain the beneficial ownership information.

FinCEN has considered the comments addressing this proposed exclusion and agrees that as proposed the exclusion would in many cases be difficult to administer. Rather than limiting its treatment of this category to entities that are exempt from Federal tax and requiring proof of such exemption, FinCEN has determined that it would be simpler, as well as more efficient and more logical, to exclude all nonprofit entities (whether or not tax-exempt) from the ownership prong of the requirement, particularly considering the fact that nonprofit entities do not have ownership interests, and require only that they identify an individual with significant responsibility to control, manage, or direct the customer. Accordingly, the final rule eliminates this proposed exclusion and instead includes as a type of legal entity customer, subject only to the control prong of the beneficial owner definition, any legal entity that is established as a nonprofit corporation or similar entity and has filed its organizational documents with the appropriate State authority as necessary.

For purposes of this provision, a nonprofit corporation or similar entity would include, among others, charitable, nonprofit, not-for-profit, nonstock, public benefit or similar corporations. Such an organization could establish that it is a qualifying entity by providing a certified copy of its certificate of incorporation or a certificate of good standing from the appropriate State authority, which may already be required for a legal entity to open an account with a financial institution under its CIP.[76] FinCEN also believes that identifying and verifying an individual under the control prong is not an onerous requirement, and understands from its outreach that in the cases of many nonprofits such an individual is already identified to the financial institution as a signatory. FinCEN also notes that as a general matter, small local community organizations, such as Scout Troops and youth sports leagues, are unincorporated associations rather than legal entities and therefore not subject to the beneficial ownership requirement.

Other Proposed Exclusions

A few commenters requested that we expand the list of exclusions to include all types of entities currently exempt from CTR reporting requirements. Although some of the exclusions to the definition of legal entity customer correspond to entities exempt from CTR reporting requirements,[77] we decline to extend these exclusions to include all of the CTR exemptions. The CTR and beneficial ownership requirements serve different purposes, and the principal underlying justification for many of the CTR exemptions—that the requirement is not feasible or appropriate for cash-intensive low-risk businesses—does not apply here. FinCEN has considered all the CTR exemptions and has included those that are logical in the context of the beneficial ownership requirement, for the reasons articulated above.

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[74] *See, e.g.,* FinCEN, *Application of the Customer Identification Program Rule to Future Commission Merchants Operating as Executing and Clearing Brokers in Give-Up Arrangements,* FIN–2007–G001 (April 20, 2007), *available at http://www.fincen.gov/statutes_regs/guidance/html/cftc_fincen_guidance.html; "FAQs: Final CIP Rule".*

[75] *See, e.g.,* 22 N.Y.C.R.R. Part 1200, Rule 1.15; California State Bar Rule of Professional Conduct 4–100.

[76] *See, e.g.,* 31 CFR 1020.220(a)(2)(ii)(A)(*2*).

Some commenters also requested that FinCEN exclude other "low-risk" entities from the definition of legal entity customer. We have considered all commenters' requests for exclusions to the definition and have incorporated only those that we have determined are appropriate in this context.

Section 1010.230(f) Covered Financial Institution. As proposed, this paragraph defined covered financial institution through incorporation by reference of the definition set forth in § 1010.605(e)(1), thereby subjecting to this requirement those financial institutions already covered by CIP requirements. FinCEN noted in the proposal that it viewed the exercise of its discretion to limit the initial application of this requirement to these institutions as appropriate, because it is logical to minimize disruption and burden to the extent possible by commencing implementation with institutions already equipped to leverage CIP procedures.

There were no significant objections to limiting the scope of this requirement in this manner, and we are accordingly adopting this definition as proposed. We note generally that FinCEN received comments from institutions not subject to CIP (nor therefore to the proposal), urging us to engage in dialogue before determining whether to expand the beneficial ownership and CDD requirements to their industries. FinCEN agrees that thoughtful engagement with all stakeholders is an essential component of the rulemaking process, and will continue to engage in outreach to inform our policy decisions and any future rulemakings. As we noted in the proposal, comments and discussions with these institutions during the course of this rulemaking have led us to believe that extending CDD requirements in the future to these, and potentially other types of financial institutions, may ultimately promote a more consistent, reliable, and effective AML regulatory structure across the financial system.

A few commenters requested that FinCEN exclude smaller financial institutions from the scope of coverage, contending principally that such institutions generally presented a lower risk profile and that implementation of the beneficial ownership requirement would be unduly burdensome. We decline to categorically exclude smaller institutions from the definition of covered financial institution. As we have noted, both in the proposal and above, one of the animating purposes of this rulemaking is to promote clear and consistent expectations across and within financial sectors, in order to promote a more level playing field when it comes to AML/CFT compliance. Uniform application of the beneficial ownership requirement would prevent the "competitive disadvantage" (cited by one commenter seeking this exclusion) that would result if prospective customers were not required "to complete the same form at . . . competitor financial institutions." And even though some smaller institutions might be lower risk, size alone should not be a determinative factor for a risk assessment, making it an inappropriate basis for a categorical exclusion. Indeed, a blanket size-based exclusion would provide a clear roadmap for illicit actors seeking an easy entry point into the financial system. Finally, FinCEN appreciates the concerns raised about the burden of implementation expressed by commenters and, as described at length above, has made numerous changes to the proposal to reduce the burden upon financial institutions. We reiterate that, as with CIP, financial institutions are expected to implement procedures for collecting beneficial ownership information "appropriate for [their] size and type of business."[78]

Section 1010.230(g) New account. See discussion above under "Identification and Verification."

Section 1010.230(h) Exemptions. In the final rule, this paragraph exempts covered financial institutions from the beneficial ownership requirement with respect to opening accounts for legal entity customers for certain specific activities and within certain limitations for the reasons described below.

Private Label Retail Credit Accounts Established at the Point-of-Sale

One commenter requested that FinCEN exempt point-of-sale retail credit accounts provided to small to mid-size business customers, including commercial private label and co-branded credit cards and installment loans, from the scope of coverage of the beneficial ownership requirement. This commenter noted that such accounts presented a lower risk of money laundering due in large part to limitations on the use of those cards inherent in these customer relationships. For example, because private label credit cards can be used only to purchase goods or services at the specified retailer at which they are issued, they would not be an attractive vehicle to launder illicit proceeds. That these accounts can only be used for domestic transactions, and generally have lower credit limits, are additional factors that mitigate the risk of these accounts. FinCEN has learned that legal entities without an established and verifiable credit history that seek such accounts are generally required to provide a personal guarantee by a natural person whose identity and credit history are verified. We agree that these characteristics and limitations associated with private label credit card accounts that are used exclusively within issuing retailers' networks, significantly decrease these accounts' susceptibility to abuse by money launderers and terrorist financers. Thus, covered financial institutions are exempt from the beneficial ownership requirement with respect to private label credit card accounts to the limited extent that they are established at the point-of-sale to obtain credit products, including commercial private label credit cards, solely for the purchase of retail goods and/or services at the issuing retailer and have a credit limit of no more than $50,000.

In contrast, credit cards that are co-branded with major credit card associations do not possess the same limitations and characteristics that would protect them from abuse. For example, co-branded credit cards can be used at any outlet or ATM that accepts those associations' cards. FinCEN therefore believes that covered financial institutions should obtain and verify beneficial ownership information with respect to opening accounts for legal entities involving such co-branded cards.

Additional Exemptions

During the comment period to the RIA, several commenters sought to exempt certain limited purpose activities from the scope of the beneficial ownership requirement, principally on the grounds that such accounts had an extremely low risk profile for money laundering because of inherent structural limitations to the accounts and the purposes for which such accounts are established.

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[77] *See* 31 CFR 1010.230(e)(2)(i), which includes certain persons exempt from CTR reporting.

[78] 31 CFR 1020.220(a)(1); 31 CFR 1023.220(a)(1); 31 CFR 1024.220(a)(1); 31 CFR 1026.220(a)(1).

Accounts Established for the Purchase and Financing of Postage

One such commenter was a limited purpose banking entity whose primary business is to facilitate the purchase and financing of postage. This commenter noted that all the accounts at its institution exist solely for small businesses, governments, and nonprofit organizations to prepay postage and earn interest (in the form of additional postage), or to finance postage through an unsecured revolving line of credit. Clients of this institution cannot use these accounts to purchase merchandise, deposit or withdraw cash, write checks, or transfer funds. FinCEN agrees that these types of accounts present a low risk of money laundering, both because of the purpose for which such accounts are established, as well as the characteristics of these accounts described above. Accordingly, covered financial institutions are exempt from the beneficial ownership requirement with respect to accounts solely used to finance the purchase of postage and for which payments are remitted directly by the financial institution to the provider of the postage products.

Commercial Accounts To Finance Insurance Premiums

Several commenters representing the commercial insurance premium finance industry submitted a joint letter outlining the expected impact of the beneficial ownership requirement on their industry, and the structural characteristics of these financial products that make them a low risk of money laundering. They noted that borrowers seeking funds to finance premiums for property and casualty insurance do not receive these proceeds directly; instead, the funds are remitted directly to an insurance company, either directly or through an insurance agent or broker. As with the limited purpose postage accounts described above, customers of premium finance companies cannot use these accounts to purchase merchandise, deposit or withdraw cash, write checks, or transfer funds. FinCEN agrees that these types of accounts present a low risk of money laundering, both because of the purpose for which such accounts are established, as well as the characteristics of these accounts that make them a poor vehicle for money laundering. For these reasons, covered financial institutions are exempt from the beneficial ownership requirement with respect to accounts solely used to finance insurance premiums and for which payments are remitted directly by the financial institution to the insurance provider or broker.

Accounts To Finance the Purchase or Lease of Equipment

One commenter representing a bank that primarily provides financial products for small business equipment leasing sought to exclude this activity from the beneficial ownership requirement with the same basic rationale put forth by the commenters representing the commercial insurance premium finance industry. Because FinCEN understands that these financial products have similar structural characteristics that limit their utility as vehicles for money laundering, covered financial institutions are exempt from the beneficial ownership requirement with respect to accounts solely used to finance the purchase or leasing of equipment and for which payments are remitted directly by the financial institution to the vendor or lessor of this equipment.

Section 1010.230(h)(2) Limitations on Exemptions. These three exemptions are subject to further limitations to mitigate the remaining limited money laundering risks associated with them, as follows:

- The exemptions identified in paragraphs (h)(1)(ii) through (iv) do not apply to transaction accounts through which a legal entity customer can make payments to, or receive payments from, third parties.
- If there is the possibility of a cash refund on the account activity identified in paragraphs (h)(1)(ii) through (iv), then beneficial ownership of the legal entity customer must be identified and verified by the financial institution as required by this section, either at the time of initial remittance, or at the time such refund occurs.

The first limitation reflects the additional structural limitation described in our discussion of these account types that makes them a low risk of money laundering, and therefore a necessary characteristic to qualify for these exclusions. The second limitation serves to mitigate the principal money laundering vulnerability in some of these accounts—to wit, the possibility of a cash refund—by requiring the identification and verification of beneficial ownership information when the initial remittance is made or when a refund actually occurs. Based upon the submissions from commenters, as well as subsequent inquiry into these financial products, FinCEN understands that most of these exempted accounts would not be affected by such limitation. Furthermore, this requirement has been drafted to give covered financial institutions flexibility in implementing this provision. Although this limitation applies broadly to accounts where there is the possibility of a refund, as a practical matter, beneficial ownership information must only be collected when such a refund actually occurs. Thus, covered financial institutions that offer such products do not have to change their onboarding systems, and FinCEN believes that in most cases, they will not have to collect this information.

Section 1010.230(i) Recordkeeping. In the NPRM, we proposed a recordkeeping requirement identical to the requirement for CIP, in order to leverage existing standards and processes to facilitate financial institutions' implementation of this requirement. Thus, under the proposal, a financial institution must have procedures for maintaining a record of all information obtained in connection with identifying and verifying beneficial owners, including retention of the Certification Form and a record of any other related identifying information reviewed or collected, for a period of five years after the date the account is closed. Furthermore, we proposed that a financial institution must also retain records for a period of five years after such record is made, including a description of every document relied on for verification, any non-documentary methods and results of measures undertaken for verification, as well as the resolution of any substantive discrepancies discovered in verifying the identification information.

Because collection of the Certification Form is no longer a requirement, we are making a corresponding change to the recordkeeping requirement for the final rule. Section 1010.230(i)(1)(i) now states that at a minimum, the record must include, for identification, any identifying information obtained by the covered financial institution pursuant to paragraph (b), including without limitation the certification (if obtained).

Most commenters who addressed this issue agreed with FinCEN's decision to have recordkeeping requirements identical to CIP. However, two commenters who submitted largely identical letters objected to this approach, asserting that the CIP recordkeeping requirements did not make sense in the context of beneficial ownership information because such information would likely change regularly for some legal entity customers, resulting in the accumulation of multiple iterations of the Certification Form, all of which would have to be retained. Despite this concern, we decline to alter the recordkeeping requirement. First, because the Certification Form is no longer mandatory, financial institutions not using it will not have to retain multiple Certification Forms, but will instead have flexibility to record any changes of beneficial ownership information in a manner that works best for their institution. And we believe the benefit from leveraging existing procedures far outweighs any benefit that might arise from a shorter recordkeeping standard, because creating a separate standard for beneficial ownership information would likely require new processes and necessitate training for employees, as well as require line employees to consistently apply different standards for beneficial ownership and CIP information.

Section 1010.230(j) Reliance on Another Financial Institution. In the NPRM, we proposed that financial institutions could rely on the performance by another financial institution of the requirements of this section under the same conditions as set forth in the applicable CIP rules.

Commenters raised a few points regarding the reliance provision as proposed. A few requested that we lower the standard for reliance below that articulated in the applicable CIP rules, by permitting reliance without a contract and annual certification, and extending the reliance provisions to regulated money services businesses and foreign affiliates of covered financial institutions subject to a global standard at least as rigorous as U.S. CIP and CDD standards. We decline to make any of these proposed changes to the reliance provision at this time. FinCEN believes that there is significant value to financial institutions in terms of account management in having uniform standards to the greatest extent possible, and that having different reliance standards for CIP and for beneficial ownership information might cause confusion and negatively impact compliance. Thus, to the extent that we would make any of the proposed changes to the reliance provision, we believe it would be important to make the same changes concurrently to the applicable CIP provisions, which would require joint rulemaking.

One commenter requested that FinCEN clarify reliance responsibilities in the drafting of selling, clearing, or counterparty agreements, without further elaboration upon the type of clarification sought or the need for such clarification. We have considered this request, and in the absence of any specific and persuasive arguments supporting the need for such clarification, we have found no reason to provide any clarification addressing this issue.

Another commenter requested that FinCEN amend the reliance provision to enable covered financial institutions to employ the services of non-financial institution third parties as beneficial ownership pre-check service providers, to conduct beneficial ownership due diligence. This commenter contended that amending the proposal in this way might facilitate compliance by permitting third parties specializing in beneficial ownership due diligence to fulfill the requirements of this section at scale, expediting legal entities' ability to open accounts. Thus, the commenter proposed adding clauses to the reliance provision permitting such reliance on these third parties if the reliance is reasonable; the third party is voluntarily subject to a rule implementing 31 U.S.C. 5318(h) and certified by Treasury or FinCEN; and the third party certifies to the financial institution that it has implemented an AML program and that it will perform the requirements of section 1010.230. FinCEN declines to make these changes. Currently, FinCEN does not have an appropriate mechanism to permit a third party to voluntarily subject itself to an AML program requirement, nor to assess and certify that party's compliance. We thus believe that it would make more sense to postpone any consideration of this approach until after FinCEN and the covered financial institutions have gained experience and understanding from implementing section 1010.230.

Section 1020.210 Anti-money laundering program requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions. In the NPRM, we proposed to amend FinCEN's existing AML program rules to expressly incorporate both the minimum statutory elements of an AML program prescribed by 31 U.S.C. 5318(h)(1), as well as the elements of the minimum standard of CDD that are not otherwise already accounted for in either the existing AML regulatory scheme (*i.e.,* CIP) or in the proposed beneficial ownership requirement.[79] Paragraphs (b)(1) through (4) correspond to the minimum statutory elements of section 5318(h)(1), while proposed paragraph (b)(5) set forth the remaining elements of CDD by requiring appropriate risk-based procedures for conducting ongoing customer due diligence including, but not limited to, (i) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile, and (ii) conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions. We described our understanding that these third and fourth elements of CDD were necessary and critical steps required to comply with the existing requirement under the BSA to identify and report suspicious transactions. Thus, expressly incorporating the third and fourth elements of CDD into the AML program rules would serve to harmonize these elements with existing AML obligations. Because the proposal sought only to clarify and explicitly state existing expectations and requirements, we emphasized that the proposal was not intended to lower, reduce, or limit the due diligence expectations of the Federal functional regulators or limit their existing regulatory discretion, nor to create any new obligations.

With respect to the third element, understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile, we elaborated upon our understanding of the manner in which current expectations satisfied this proposed requirement. We observed that under the existing requirement for financial institutions to report suspicious activity, they must file SARs on a transaction that, among other things, has "no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage."[80] Banks specifically are expected to "obtain information at account opening sufficient to develop an understanding of normal and expected activity for the customer's occupation or business operations."[81] In short, to understand the types of transactions in which a particular customer would normally be expected to engage necessarily requires an understanding of the nature and purpose of the customer relationship, which informs the baseline against which aberrant, suspicious transactions are identified. It was this fundamental expectation that FinCEN sought to encapsulate in its articulation of the third element. Moreover, as FinCEN stated in the proposal, in some circumstances an understanding of the nature and purpose of a customer relationship can also be developed by inherent or self-evident information about the product or customer type, such as the type of customer, the type of account opened, or the service or product offered, or other basic information about the customer, and such information may be sufficient to understand the nature and purpose of the relationship. We further noted that, depending on the facts and circumstances, other relevant facts could include basic information about the customer, such as annual income, net worth, domicile, or principal occupation or business, as well as, in the case of longstanding customers, the customer's history of activity.

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[79] In the proposal, we described these elements, which we believe to be fundamental to an effective AML program, as follows: (i) Identifying and verifying the identity of customers; (ii) identifying and verifying the identity of beneficial owners of legal entity customers (*i.e.,* the natural persons who own or control legal entities); (iii) understanding the nature and purpose of customer relationships; and (iv) conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions. *See* 79 FR at 45152.

[80] 31 CFR 1020.320(a)(2)(iii); *see also* 31 CFR 1023.320(a)(2)(iii), 1024.320(a)(2)(iii), and 1026.320(a)(2)(iii).

[81] FFIEC Manual at 57.

Regarding the fourth element, conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions, we noted our understanding that, as with the third element, current industry practice to comply with existing expectations for SAR reporting should already satisfy this proposed requirement. Banks are expected to have in place internal controls to "provide sufficient controls and monitoring systems for timely detection and reporting of suspicious activity."[82] In short, the proposal served to codify existing supervisory and regulatory expectations for banks as explicit requirements within FinCEN's AML program requirement in order to make clear that the minimum standards of CDD, as articulated, include ongoing monitoring of all transactions by, at, or through the financial institution. As proposed, the obligation to update customer information as a result of monitoring would generally only be triggered when the financial institution becomes aware of information about the customer in the course of normal monitoring relevant to assessing the risk posed by a customer; it was not intended to impose a categorical requirement to update customer information on a continuous or ongoing basis using the Certification Form in Appendix A or by another means.

Commenters raised a number of points about FinCEN's proposal to expressly incorporate the third and fourth elements of CDD as a "fifth pillar" into the AML program rules. Some questioned whether FinCEN had the statutory authority to adopt these amendments to the program rules. A few commenters expressed general approval of this approach but sought clarification of its application, while other commenters opposed the codification of existing regulatory expectations, questioning the need to do so in light of current regulatory expectations. Some commenters raised concerns about FinCEN's articulation of the ongoing monitoring requirement, contending that the element as proposed imposed an obligation to continuously update customer information. We address these comments and provide additional clarification for banks below.

A few commenters challenged FinCEN's statutory authority to amend the AML program rules in this fashion. They argued principally that FinCEN's actions exceeded the scope of its statutory authority because it proposed to incorporate into the regulations implementing the AML program, elements not found in the authorizing statute, 31 U.S.C. 5318(h). This argument is not supported by a plain reading of the statutory text. Section 5318(h)(1) provides in relevant part that "each financial institution shall establish anti-money laundering programs, including, *at a minimum*—[the four statutory pillars]. . . ." (emphasis added). And section 5318(h)(2) further provides that "[t]he Secretary of the Treasury, after consultation with the appropriate Federal functional regulator . . . may prescribe minimum standards for programs established under paragraph (1). . . ." The first clause by its terms does not limit an AML program exclusively to the four enumerated statutory elements, and the statutory scheme clearly vests the Secretary[83] with discretion to adapt the AML program to changing circumstances as warranted after consultation with the Federal functional regulators. FinCEN's actions today fall squarely within the scope of its statutory delegation of authority from the Secretary and the plain language of Section 5318(h)(1).

One commenter asserted that the creation of this new "fifth pillar" separate from the other elements of CDD that are already incorporated into the "internal controls" pillar, could complicate how existing internal controls are identified and managed, possibly requiring the revision of existing systems and programs, including training and audit functions, thereby needlessly consuming banks' AML resources. As described at greater length above and below, FinCEN views the fifth pillar as nothing more than an explicit codification of existing expectations; as these expectations should already be taken into account in a bank's internal controls, FinCEN would expect the confusion caused by this codification, if any, to be minimal. Furthermore, FinCEN believes that, in order to bring uniformity and consistency across sectors, it is important that these due diligence elements be made explicit, and that they be part of the AML program of depository institutions (as well as of the other covered financial institutions). We believe that harmonizing these requirements across financial sectors will strengthen the system as a whole, by further limiting opportunities for inconsistent application of unclear or unexpressed expectations. The same commenter also asserted that imposing this requirement unilaterally "places FinCEN at odds with the prudential regulators." However, FinCEN notes that the proposed CDD rule as well as this final rule, were issued after consultation with the staffs of the prudential regulators.

Most bank commenters did not raise objections to the concept of a customer risk profile. The banks that commented on this issue noted generally that they understood the concept as it applied to their industry. One commenter subject to AML requirements for banks, broker-dealers, mutual funds, and insurance companies raised concerns that the concept of a customer risk profile implicated personal privacy interests and that information about personal attributes of customers could be used for inappropriate profiling. We reiterate here that for banks, the term "customer risk profile" is used to refer to the information gathered about a customer to develop the baseline against which customer activity is assessed for suspicious transaction reporting. As such, we would not expect there to be any significant changes to current practice that is consistent with existing expectations and requirements, and certainly not in the form of inappropriate profiling.

A few commenters raised objections to the ongoing monitoring element in the proposal, contending that, as articulated, it was inconsistent with current requirements or expectations regarding the monitoring of customers and transactions and appeared to impose a new requirement to monitor, maintain, and update customer information on a continuous basis. Commenters also requested that FinCEN clarify the relationship between ongoing monitoring and updating beneficial ownership information, asserting that the expectation articulated in the proposal that financial institutions should update beneficial ownership information in connection with ongoing monitoring was unclear. As we noted in the proposal and above, the purpose of articulating the requirement regarding updating customer information was to codify existing practice relating to ongoing monitoring, and not to impose a new categorical requirement to continuously update customer information. However, we agree with the commenters that this element as presented in the proposal could be construed in this fashion. Thus, the final rule amends the ongoing monitoring prong to state that ongoing monitoring is conducted to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For these purposes, customer information shall include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230).

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[82] *Id.* at 29–30.

[83] As noted above, the Secretary has delegated to the Director of FinCEN the authority to implement the BSA and associated regulations.

We believe that this change to the ongoing monitoring clause better encapsulates current practice in the AML/CFT area, and therefore, the nature of the obligation—that is, financial institutions are presently expected to conduct a monitoring-triggered update of customer information when they detect information during the course of their normal monitoring relevant to assessing or reevaluating the risk of a customer relationship. Such information could include, *e.g.*, a significant and unexplained change in customer activity. It could also include information indicating a possible change in beneficial ownership, when such change might be relevant to assessing the risk posed by the customer. In any such event, it is appropriate to update the customer information accordingly. As we noted in the proposal, including the ongoing monitoring element in the AML program rules serves to reflect existing practices to satisfy SAR reporting obligations. Although the beneficial ownership information collection requirement was not in place at the time of the proposal, this information may be relevant in assessing the risk posed by the customer and in assessing whether a transaction is suspicious. Moreover, FinCEN believes it is also consistent that this updating requirement should apply not only to customers with new accounts, but also to customers with accounts existing on the Applicability Date. That is, should the financial institution learn as a result of its normal monitoring that the beneficial owner of a legal entity customer may have changed, it should identify the beneficial owner of such customer. For example, we can envision a situation where an unexpected transfer of all of the funds in a legal entity's account to a previously unknown individual would trigger an investigation in which the bank learns that the funds transfer was directly related to a change in the beneficial ownership of the legal entity.[84] FinCEN emphasizes that the obligation to update customer information pursuant to this provision, including beneficial ownership information, is triggered only when, in the course of its normal monitoring, the financial institution detects information relevant to assessing the risk posed by the customer; it is not intended to impose a categorical requirement to update customer or beneficial ownership information on a continuous or ongoing basis.

One commenter asserted that it would be difficult to conceive of a scenario where the ongoing monitoring of transactions would provide information to a financial institution indicating a potential change in beneficial ownership. Accordingly, the commenter suggested that we link the expectation to update beneficial ownership information only to monitoring of the customer relationship. We generally agree with the notion that it is unlikely that transaction monitoring will uncover information suggestive of a change of beneficial ownership, because such monitoring generally does not tend to provide insight into the transfer of ownership or operational control. Nevertheless, we do not believe that a categorical exclusion of beneficial ownership information from this element would be appropriate. First, FinCEN believes that the revision of the ongoing monitoring element for the final rule as described above largely addresses this concern—as we have noted repeatedly, our requirement is consistent with current practice, and we expect monitoring-triggered updating of beneficial ownership information (as with other customer information) only to occur on a risk basis when material information about a change in beneficial ownership is uncovered during the course of a bank's normal monitoring (whether of the customer relationship or of transactions). As noted in the preceding paragraph, there may be unusual cases where transaction monitoring might lead to information about a possible change in beneficial ownership, and we are therefore unwilling to categorically foreclose this avenue of inquiry. However, there is no expectation that a financial institution obtain updated beneficial ownership information from its customers on a regular basis, whether by using the Certification Form in Appendix A or by any other means.

This commenter also expressed concern about subjecting all account relationships to the requirement to monitor to identify and report suspicious transactions, contending that this implied a uniform requirement for monitoring transactions that was inconsistent with the risk-based approach. Therefore, the commenter requested that FinCEN expressly articulate that ongoing monitoring be conducted pursuant to the risk-based approach. We clarify first that our expectation that all accounts be subject to ongoing monitoring does not mean that we expect all accounts to be subject to a uniform level of scrutiny. Rather, we fully expect financial institutions to apply the risk-based approach in determining the level of monitoring to which each account will be subjected. Thus, consistent with current practice, we would expect the level of monitoring to vary across accounts based on the financial institution's assessment of the risk associated with the customer and the account. We also noted that all account relationships would be subject to this requirement merely to reflect the fact that all accounts must necessarily be monitored in some form in order to comply with existing SAR requirements, and not only those subject to the CIP rule.

Section 1023.210 Anti-money laundering program requirements for brokers or dealers in securities. The structural changes to this section, as well as the rationale for these amendments, are identical to those articulated for banks above.[85]

As in the case of banks described above, FinCEN emphasizes that the incorporation of these elements is intended to explicitly articulate current practices consistent with existing regulatory and supervisory expectations. Thus, understanding the nature and purpose of customer relationships encapsulates practices already generally undertaken by securities firms to know and understand their customers. In the proposal, we observed that under the existing requirement for financial institutions to report suspicious activity, they must file SARs on a transaction that, among other things, has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage.[86] To understand the types of transactions in which a particular customer would normally be expected to engage necessarily requires an understanding of the nature and purpose of the customer relationship, which informs the baseline against which aberrant, suspicious transactions are identified. As described at greater length below, however, we understand that this type of assessment may not necessarily be contemporaneous.

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[84] The same changes are being made to the ongoing monitoring provisions of the AML program rules for the other covered financial institutions.

[85] As we noted in the proposal, FinCEN's current AML program rule for broker-dealers differs from the current program rule issued by FINRA, principally because FINRA has included as a pillar within its AML program rule a requirement with respect to suspicious activity reporting. This integrated treatment of the SAR requirement also differs from the practice of the other financial sectors covered by this rulemaking. We reiterate that FinCEN is not proposing to incorporate, as FINRA has done, a SAR reporting requirement as a separate pillar within the AML program rules, as the existing stand-alone SAR obligation within FinCEN's regulations is sufficient. However, the decision to not include a SAR requirement within the program rules is not meant to affect its treatment in any way within the FINRA rule.

For example, as a part of their due diligence at account opening, broker-dealers are expected to, *inter alia,* "inquire about the source of the customer's assets and income so that the firm can determine if the inflow and outflow of money and securities is consistent with the customer's financial status," as well as "gain an understanding of what the customer's likely trading patterns will be, so that any deviations from the patterns can be detected later on, if they occur."[87] And as FinCEN stated in the proposal, in some circumstances an understanding of the nature and purpose of a customer relationship can also be developed by inherent or self-evident information about the product or customer type, or basic information about the customer, and such information may be sufficient to understand the nature and purpose of the relationship. We further noted that, depending on the facts and circumstances, other relevant facts could include basic information about the customer, such as annual income, net worth, domicile, or principal occupation or business, as well as, in the case of longstanding customers, the customer's history of activity. For example, FinCEN understands that some securities firms sometimes use suitability information gathered pursuant to FINRA Rule 2111 in determining whether a given transaction is one which would be expected from a particular customer. It is these types of current practices that FinCEN sought to encapsulate in its articulation of the third element.

Regarding the fourth element as proposed in the NPRM, conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions, we noted our understanding and expectation that, as with the third element, current industry practice for SAR reporting should already satisfy this proposed requirement. In short, the proposal was intended to codify existing supervisory and regulatory expectations as explicit requirements within FinCEN's AML program requirement, in order to make clear that the minimum standards of CDD, as articulated, include ongoing monitoring of all transactions by, at, or through the financial institution.

Securities industry commenters raised a number of concerns about the proposed fifth pillar as it would apply to their industry. A few commenters sought clarification of the concept of a customer risk profile, as well as of how the nature and purpose of customer relationships were to be understood for customers of broker-dealers. Commenters also requested that FinCEN clarify the extent of the ongoing monitoring requirement for the securities industry.

Commenters asked that FinCEN clarify or define what constitutes a customer risk profile, noting that the term is not commonly used in the securities industry. One commenter noted that while some securities firms assign risk scores to customers, the practice is not mandated by regulation and not widely adopted in the industry; thus, this commenter opposed imposing such a categorical requirement. As it does for banks, the term "customer risk profile" is used to refer to the information gathered about a customer to develop the baseline against which customer activity is assessed for suspicious transaction reporting. Depending on the firm and the nature of its business, it may appropriately take the form of individualized risk scoring, placement of customers into risk categories, or some other method of assessing customer risk. We note that neither the Federal securities laws nor FINRA rules explicitly require firms to create a formal risk "score" for all customers. However there is a basic expectation that members of the industry understand the risks posed by their customers and be able to demonstrate this understanding. As with banks, we do not expect the customer risk profile to necessarily be integrated into existing monitoring systems to serve as the baseline for identifying and assessing suspicious transactions on a contemporaneous basis. Rather, we expect broker-dealers to utilize the customer risk profile as necessary or appropriate during the course of complying with their SAR requirements—as we understand is consistent with the general current practice—in order to determine whether a particular transaction is suspicious.

On a related note, commenters also requested that FinCEN clarify the manner in which understanding the nature and purpose of customer relationships would apply to broker-dealers, particularly with respect to how such information would relate to existing transaction monitoring practices. They claimed that most existing monitoring systems in the securities industry identify typologies of suspicious activity, such as market manipulation or money movements, in a manner that does not depend on a concurrent understanding of the customer to trigger an alert. Accordingly, commenters stated that because such customer information is not always necessary for the initial recognition of suspicious activity, it is generally not integrated into these monitoring systems. Thus, one commenter asked FinCEN to clarify that nature and purpose information would not be required for use in transaction monitoring.

We note that understanding the nature and purpose of customer relationships does not necessarily require broker-dealers to integrate customer information into transaction monitoring systems in all instances. Rather, as it relates to broker-dealers' SAR requirements, we expect this information to be used at least in some cases in determining whether a particular flagged transaction is suspicious. As a part of broker-dealers' SAR reporting obligations, they must necessarily have an understanding of the nature and purpose of a customer relationship in order to determine whether a transaction is not the sort in which the particular customer would normally be expected to engage.[88] FinCEN understands that many broker-dealers use this information during the course of an investigation into suspicious activity triggered by transaction monitoring, *i.e.,* after and not necessarily concurrent with transaction monitoring; accordingly, based on our understanding of these practices, we generally do not expect that such firms would need to change these practices in order to be in compliance with this requirement.

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[86] 31 CFR 1020.320(a)(2)(iii); *see also* 31 CFR 1023.320(a)(2)(iii), 1024.320(a)(2)(iii), and 1026.320(a)(2)(iii).

[87] Nat'l Ass'n of Securities Dealers, *Special NASD Notice to Members 02–21* 7 (Apr. 2002).

[88] 31 CFR 1023.320(a)(2).

One commenter questioned the need to incorporate the nature and purpose element into the AML program rules for broker-dealers if it is an inherent part of suspicious activity reporting. This commenter noted its concern that express incorporation of this element into the AML program rules might require changes to broker-dealers' account opening procedures in order to demonstrate compliance with this provision, and requested that FinCEN clarify its reasons for amending the AML program rules in this way. As we noted above, FinCEN believes that, in order to bring uniformity and consistency across sectors, it is important that these due diligence elements be made explicit, and that they be part of the AML program of broker-dealers in securities (as well as of the other covered financial institutions). We believe that harmonizing these requirements across financial sectors will strengthen the system as a whole, by further limiting opportunities for inconsistent application of unclear or unexpressed expectations. FinCEN further expects that broker-dealers would generally not need to alter their account opening procedures to satisfy this requirement to the extent that broker-dealers are compliant with existing supervisory or regulatory expectations as discussed herein.

Commenters also requested that FinCEN clarify the nature of the ongoing monitoring requirement. One commenter urged FinCEN to remove the clause pertaining to maintaining and updating customer information because securities firms do not currently have an obligation to conduct ongoing monitoring to update customer information. Another urged FinCEN to limit the obligation to update customer information to "negative-event" triggers discovered during the course of monitoring. We believe that the clarifying changes made to the ongoing monitoring clause for the final AML program rules for all covered financial institutions and described above in the discussion of banks addresses these concerns. The final rule states that ongoing monitoring is conducted to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For these purposes, customer information shall include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230).

As discussed above for banks, broker-dealers are presently expected to conduct a monitoring-triggered update of customer information when they learn of material information relevant to assessing the risk of a customer relationship during the course of their normal monitoring. Under this rule, financial institutions shall include beneficial ownership information in the customer information to be updated, in cases where a change in such information could affect the risk presented by the customer, since such information could be relevant to assessing customer risk. As we noted in the proposal, including the ongoing monitoring element in the AML program rules served to reflect existing practices to satisfy SAR reporting obligations. Although the beneficial ownership information collection requirement was not in place at the time of the proposal, this information may be relevant in assessing the risk posed by the customer and in assessing whether a transaction is suspicious. Moreover, FinCEN believes it is also consistent that this requirement should apply not only to customers with new accounts, but also to customers with accounts existing on the Applicability Date. That is, should the financial institution detect as a result of its normal monitoring that the beneficial owner of a legal entity customer may have changed, it should identify the beneficial owner of such customer, whether or not it has already done so. For example, we can envision a situation where an unexpected transfer of all of the funds in a legal entity's account to a previously unknown individual would trigger an investigation in which the financial institution learns that the funds transfer was directly related to a change in the beneficial ownership of the legal entity.[89] FinCEN emphasizes that the obligation to update customer information pursuant to this provision, including beneficial ownership information, is triggered only when, in the course of its normal monitoring, the financial institution detects information relevant to assessing the risk posed by the customer; it is not intended to impose a categorical requirement to update customer or beneficial ownership information on a continuous or ongoing basis.

Section 1024.210 Anti-money laundering program requirements for mutual funds. The structural changes to this section, as well as the rationale for these amendments, are identical to those articulated for banks and broker-dealers above. However, as an initial matter, FinCEN notes that, unlike the situation for other covered financial institutions, a relatively small proportion of a mutual fund's underlying customers purchase their shares directly from the fund. Rather, the great majority of mutual fund investors purchase shares through an intermediary, such as a securities broker-dealer, and therefore the mutual fund has no direct relationship with them. In addition, of all the legal entity customers of a mutual fund, a significant number are typically financial intermediaries (*e.g.,* securities broker-dealers), most of which are regulated. Such intermediaries are nonetheless subject to a mutual fund's AML program, which requires the application of risk-based due diligence. Of those legal entity customers that are not financial intermediaries, a substantial number are in many cases corporations that are administering benefit plans for their employees (or administrators doing this on behalf of such employers); these relationships are also subject to risk-based due diligence. Thus, FinCEN understands that any legal entities that are direct customers of a fund, and not any type of intermediary, would comprise a relatively small portion of its direct customers, and FinCEN expects that such non-intermediary legal entity customers would be subject to a different risk assessment than intermediary customers for due diligence purposes. The following discussion of mutual fund customer relationships must be read in this context.

As in the case of banks and broker-dealers as described above, FinCEN emphasizes that the incorporation of these elements serves only to articulate current practice consistent with existing regulatory and supervisory expectations. Thus, understanding the nature and purpose of customer relationships encapsulates practices already generally undertaken by mutual funds to know and understand their customers. In the proposal, we observed that under the existing requirement for financial institutions to report suspicious activity, they must file SARs on a transaction that, among other things, has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage.[90] To understand the types of transactions in which a particular customer would normally be expected to engage necessarily requires an understanding of the nature and purpose of the customer relationship, which informs the baseline against which aberrant, suspicious transactions are measured. As FinCEN stated in the proposal, depending on the facts and circumstances, other relevant facts could include basic information about the customer, such as annual income, net worth, domicile, or principal occupation or business, as well as, in the case of longstanding customers, the customer's history of activity. Furthermore, in some circumstances an understanding of the nature and purpose of a customer relationship can also be developed by inherent or self-evident information about the product or customer type, or basic information about the customer, and such information may be sufficient to understand the nature and purpose of the relationship.

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[89] The same changes are being made to the ongoing monitoring provisions of the AML program rules for the other covered financial institutions.

[90] 31 CFR 1024.320(a)(2)(iii).

This final point is particularly relevant for the mutual fund industry. As commenters from the industry noted, mutual funds are best understood as a form of financial product rather than as an institution providing financial services or investment advice. We understand that much of a mutual fund's understanding of the nature and purpose of a customer relationship arises predominantly from the customer's initial decision to invest in a mutual fund, as reflected largely by the customer's choice of product. As with banks and broker-dealers, such customer information is not necessarily used as a contemporaneous point of comparison in monitoring systems. However, as with banks and broker-dealers, we also understand that many mutual funds use this information during the course of an investigation into suspicious activity triggered by transaction monitoring, *i.e.*, after and not concurrent with transaction monitoring; we would not generally expect such firms to change their practices in order to comply with this requirement. It was this fundamental established practice that FinCEN sought to encapsulate in its articulation of the third element. Accordingly, we expect this element to be construed fully consistently with the SAR rule and associated guidance for mutual funds.[91] As with banks and broker-dealers, the term "customer risk profile" means information gathered about a customer to develop the baseline against which customer activity is assessed for suspicious transaction reporting. We also do not expect the customer risk profile to necessarily be integrated into existing monitoring systems to serve as the baseline for understanding suspicious transactions on a contemporaneous basis (as described with regard to banks and broker-dealers). Rather, we expect mutual funds to utilize the customer risk profile as necessary or appropriate during the course of complying with their SAR requirements—as we understand is consistent with the general current practice—in order to determine whether a particular transaction is suspicious.

Regarding the fourth element as proposed in the NPRM, conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions, we noted our understanding that, as with the third element, current industry expectations for SAR reporting should already satisfy this proposed requirement. In short, we intended the proposal to codify existing supervisory and regulatory expectations as explicit requirements within FinCEN's AML program requirement in order to make clear that the minimum standards of CDD, as articulated, include ongoing monitoring of all transactions by, at, or through the financial institution. As proposed, the obligation to update customer information in the course of monitoring would generally only be triggered when the financial institution became aware of information as part of its normal monitoring relevant to assessing the risk posed by a customer; it was not intended to impose a categorical requirement to update customer information on a continuous or ongoing basis. Because of the structural ambiguities in the proposal as articulated above, we have also amended the ongoing monitoring prong for the final rule for mutual funds. The final rule states that ongoing monitoring is conducted to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For these purposes, customer information shall include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230).

As described above in the sections addressing banks and broker-dealers, we believe that this change to the ongoing monitoring provision is more consistent with current practice, and therefore, with the nature of the obligation—that is, when mutual funds detect information relevant to assessing the risk of a customer relationship during the course of their normal monitoring, they would then be expected to update customer information. Consistent with the new requirement to collect beneficial ownership information in this rulemaking, such customer information would include beneficial ownership information, and would apply to new customers as well as those existing on the Applicability Date.

Section 1026.210 Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities. The structural changes to this section, as well as the rationale for these amendments, are identical to those articulated for other covered financial institutions described above.

As in the case of the other covered financial institutions, FinCEN reiterates that the incorporation of these elements is intended to explicitly articulate current practices consistent with existing regulatory and supervisory expectations. Thus, understanding the nature and purpose of customer relationships encapsulates practices already generally undertaken by futures firms to know and understand their customers. In the proposal, we observed that under the existing requirement for financial institutions to report suspicious activity, they must file SARs on a transaction that, among other things, has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage.[92] To understand the types of transactions in which a particular customer would normally be expected to engage necessarily requires the futures commission merchant or introducing broker to have an understanding of the nature and purpose of the customer relationship, which informs the baseline against which aberrant, suspicious transactions are identified. As described at greater length below, we understand that for the futures industry, this may not necessarily be a contemporaneous assessment.

For example, under the National Futures Association's (NFA) AML Interpretive Notice, futures commission merchants and introducing brokers are expected to understand the nature and purpose of their customer relationships to inform their suspicious activity reporting: "Recognizing suspicious transactions requires familiarity with the firm's customers, including the customer's business practices, trading activity and patterns. What constitutes a suspicious transaction will vary depending on factors such as the identity of the customer and the nature of the particular transaction."[93] And as FinCEN stated in the proposal, in some circumstances an understanding of the nature and purpose of a customer relationship can also be developed by inherent or self-evident information about the product or customer type, or basic information about the customer, and such information may be sufficient to understand the nature and purpose of the relationship. It also may vary depending on the type of entity opening the account. For example, a clearing futures commission merchant at account opening would be focused on the creditworthiness of the customer, and not necessarily trading patterns, as the trades would be executed through an executing futures commission merchant. The nature and purpose of the relationship for the clearing futures commission merchant would be a clearing account for futures and options transactions. We further noted and understand that, depending on the facts and circumstances, relevant information regarding the customer obtained under NFA Compliance Rule 2–30 and CFTC Rule 1.37(a)(1) could include basic information about the customer such as annual income, net worth, domicile, or principal occupation or business, as well as, in the case of longstanding customers, the customer's history of activity. Such information could be useful to understand the nature and purpose of the customer relationship, and to determine whether a given transaction is one which would be expected from a particular customer. It is these types of current practices that FinCEN sought to encapsulate in its articulation of the third element.

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[91] *See* 74 FR 26213, 26216 n.29 (May 4, 2006); Frequently Asked Questions, Suspicious Activity Report Requirements for Mutual Funds, FIN–2006–G013 (Oct. 4, 2006).

[92] 31 CFR 1020.320(a)(2)(iii); *see also* 1023.320(a)(2)(iii), 1024.320(a)(2)(iii), and 1026.320(a)(2)(iii).

Regarding the fourth element as proposed in the NPRM, conducting ongoing monitoring to maintain and update customer information and to identify and report suspicious transactions, we noted our understanding and expectation that, as with the third element, current industry practice for SAR reporting should already satisfy this proposed requirement. In short, the proposal served to codify existing supervisory and regulatory expectations as explicit requirements within FinCEN's AML program requirement in order to make clear that the minimum standards of CDD, as articulated, include ongoing monitoring of all transactions by, at, or through the financial institution. As proposed, the obligation to update customer information in the course of monitoring would generally only be triggered when the financial institution became aware of information as a result of its normal monitoring relevant to assessing the risk posed by a customer; it was not intended to impose a categorical requirement to update customer information on a continuous or ongoing basis. Because of the structural ambiguities in the proposal as articulated above, we have also amended the ongoing monitoring prong for the final rule for futures commission merchants and introducing brokers. The final rules states that ongoing monitoring is conducted to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For these purposes, customer information shall include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230).

As described in the sections above pertaining to banks, securities broker-dealers, and mutual funds, we believe that this change better articulates current practice and, therefore, the nature of the obligation—that is, when futures firms detect information relevant to assessing the risk of a customer relationship during the course of their normal monitoring, they then would be expected to update customer information.

A commenter representing the futures industry raised a number of concerns about the third and fourth elements of CDD as put forth in the proposal.

The commenter challenged FinCEN's authority to amend the AML program rules in this fashion, contending principally that it was outside FinCEN's authority to incorporate non-BSA regulatory schemes—specifically, suitability and know-your-customer rules that we cited in the proposal when describing current practices at futures firms for understanding customers—into BSA regulations. First, FinCEN reaffirms, as described above, its general statutory authority to amend the AML program rules by adding elements beyond those specifically listed in the statute. We also reject the notion that amending the AML program rules in this way is an incorporation-by-reference of other regulatory schemes outside of the scope of FinCEN's statutory authority. Our citation to CFTC and NFA rules in the proposal served only to reflect that "this information could be relevant for understanding the nature and purpose of customer relationships,"[94] and would also be relevant for compliance with NFA Compliance Rule 2–9. Recognition of the relevance of this information is not tantamount to mandating the inclusion of these other regulatory schemes into BSA regulations. As we noted above, we understand that as a matter of practice some futures firms use this information to understand the nature and purpose of the customer relationship, but the fifth element does not require that such information be integrated into futures firms' AML monitoring programs on a contemporaneous basis, as a matter of regulatory compliance or expectation.

This commenter also requested that FinCEN clarify what constitutes a customer risk profile, noting that the term is not commonly used in the AML context in the futures industry. The commenter urged FinCEN to remove this term from the final rule or provide additional opportunities for comment because of this lack of understanding. As it does for banks, broker-dealers, and mutual funds, the term "customer risk profile" refers to the information gathered about a customer to develop the baseline against which customer activity is assessed for suspicious transaction reporting. We note that neither the Federal futures laws nor the National Futures Association's rules explicitly require firms to create a "customer risk profile" or a formal risk "score" for all customers. However, there is a basic expectation that members of the industry understand the risks posed by their customers and be able to demonstrate this understanding. As with banks, broker-dealers, and mutual funds, we do not expect a customer risk profile to necessarily be integrated into existing monitoring systems to serve as the baseline for understanding suspicious transactions on a contemporaneous basis. Rather, we expect futures commission merchants and introducing brokers to utilize the customer risk profile information as necessary or appropriate during the course of complying with their SAR requirements—as we understand is consistent with current practice—in order to determine whether a particular transaction is suspicious. Because of this, we do not believe it is necessary to eliminate the term nor provide additional opportunity for comment.

In addition, the commenter also requested that FinCEN clarify the nature of the ongoing monitoring requirement, contending that it would be burdensome if FinCEN intended by this element to require continuous monitoring for the purpose of updating customer information. We believe that the clarifying changes made to the ongoing monitoring clause for the final rule, discussed above, address this concern.

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[93] National Futures Association Compliance Rule 2–9: FCM and IB Anti-Money Laundering Program Interpretive Notice.

[94] 79 FR at 45163 n.51.

Finally, the commenter requested that FinCEN clarify the significance of the distinction between the terms "account" and "customer" with respect to the statement in the proposal that the fifth pillar not be limited only to customers for purpose of the CIP rules, but rather, extend to all accounts established by the institution. This commenter urged FinCEN to clarify this point particularly with respect to guidance for the futures industry, stating that CIP obligations do not apply to executing brokers in give-up arrangements and omnibus relationships, concerned that the fifth pillar might otherwise supersede the guidance. We noted that all account relationships, and not only those which are "accounts" within the CIP rule definition, would be subject to this requirement merely to reflect that all accounts must necessarily be monitored in some form in order to comply with existing SAR requirements.[95]

IV. Regulatory Analysis

A. Executive Orders 13563 and 12866

It has been determined that this regulation is an economically significant regulatory action as defined in section 3(f)(1) of Executive Order (E.O.) 12866, as amended. Accordingly, this final rule has been reviewed by the Office of Management and Budget (OMB). As a result of being an economically significant regulatory action, FinCEN prepared and made public a preliminary RIA, along with an Initial Regulatory Flexibility Analysis (IRFA) pursuant to the Regulatory Flexibility Act, discussed below, on December 24, 2015. We received 38 comments about the RIA and/or the IRFA, which we address below. We have incorporated additional data points, additional sources of costs, and other points raised by commenters, directly into the final RIA itself, which we publish below in its entirety, following our narrative response to the remaining comments not addressed by these changes to the RIA.

1. Discussion of Comments to the RIA

General Comments

A few commenters sought an extension of the comment period for the RIA, contending principally that 30 days was an inadequate amount of time to gather additional data to respond to the RIA's analyses, especially in light of its publication during the winter holidays. FinCEN denied the requests, noting that we believed the time period to be sufficient, "particularly in light of the extensive comment period provided over the course of the CDD rulemaking, which included industry's views on the perceived costs and burdens regarding . . . CDD." In the preamble to the final rule, we described the extensive, years-long outreach conducted during the course of this rulemaking, during which time several commenters provided input regarding costs that they expected to incur implementing the rule. Of these commenters, only a small portion quantified these expected effects in a meaningful way. As described at greater length below in the section addressing cost-related comments, FinCEN and Treasury's Office of Economic Policy (OEP) conducted substantial follow-up with parties that provided such figures, and determined that it was impracticable to obtain the data necessary to fully quantify the costs associated with implementing the CDD rule. This challenge, combined with the difficulty of quantifying many of the CDD rule's expected benefits, led us to rely predominantly upon the breakeven analysis[96] to assess the relative benefits and costs of the CDD rule. The cost used in the breakeven analysis includes an order-of-magnitude assessment of information technology (IT) upgrade costs, identified by financial institutions during the comment period and our subsequent outreach as the most substantial driver of implementation costs. Because the RIA is meant to measure the expected costs and benefits of the rule in aggregate, and given the data quality and quantity concerns, we conducted an order-of-magnitude assessment. The conclusion of the order-of-magnitude assessment probably would not be materially changed by gathering additional data unless the current data points are outliers. The conclusions of the primary cost estimation would not be changed and thereby would not materially affect the RIA's ultimate conclusion. We did not receive any substantive comment on the IT cost during the comment period. The comments and any associated data points that we received, whether pertaining to categories of implementation costs that were already included in the RIA or costs that we had overlooked and have since added (note that we incorporated all relevant quantifiable data received from the commenters into the updated RIA, which upwardly adjusted its cost calculations), have not significantly impacted our results.

Some commenters took issue with the "academic" nature of the analysis set forth in the RIA, asserting that it was based on unfounded assumptions about the impact of the rule upon the behavior of illicit actors and therefore on aggregate levels of crime. For example, a few commenters challenged the notion that the beneficial ownership requirement would result in criminal actors actually providing information to financial institutions that would be valuable to law enforcement agencies; these commenters noted that such actors could simply provide false information, or hire straw men for the sole purpose of opening accounts. We address the specific comments regarding the various assumptions underlying our analysis below.

As for the general comment that the approach we took in the RIA was too academic, we note first that OMB guidance recommends that an RIA should be "based on the best reasonably obtainable . . . economic information available. To achieve this, [agencies] should generally rely on peer-reviewed literature, where available."[97] Unfortunately, there is not a body of direct empirical evidence regarding criminals' behavior in response to AML/CFT laws and regulations. In the absence of such analysis, and relatedly, the absence of any data on which to perform our own analysis, FinCEN asserts that it is both reasonable and appropriate to look to the academic literature on the economics of crime for a framework for formally thinking about how the CDD rule would potentially affect criminal outcomes. In this less-than-ideal situation where empirical estimates of the rule's effects on crime are lacking, the canonical economic model of crime at least provides useful insights into the mechanisms by which the rule could affect crime, which can in turn be assessed on the grounds of their plausibility. Like any economic model, this one assumes that its actors behave rationally, a premise that some commenters found objectionable and used to justify their protests of our use of any economic model of crime.[98] On this point—that criminals are not economic actors and thus do not respond to incentives—we strongly disagree based on empirical evidence appearing in peer-reviewed academic journals.[99]

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[95] "Although a futures commission merchant's customer identification program will not apply when it is operating solely as an executing broker in a give-up arrangement, the futures commission merchant's anti-money laundering program should contain risk-based policies, procedures, and controls for assessing the money laundering risk posed by its operations, including its execution brokerage activities; for monitoring and mitigating that risk; and for detecting and reporting suspicious activity." FIN–2007–G001.

[96] As described at greater length in the RIA, a breakeven analysis asks how large the present value of benefits has to be so that it is just equal to the present value of costs.

[97] OMB Circular A–4, available at *https://www.whitehouse.gov/omb/circulars_a004_a-4.*

[98] More formally, an individual's preferences are rational if (1) she has a well-defined preference between any two possible alternatives and (2) her

Some commenters asserted that FinCEN and OEP took an inconsistent approach towards assessing the expected costs and benefits in the RIA. These commenters contended that we included certain unquantified benefits but excluded certain unquantified costs, rendering the analysis arbitrary. This RIA quantifies some of the cost categories and qualitatively describes the other cost categories and benefits consistent with OMB guidance. OMB Circular A–4 directs agencies to quantify both costs and benefits to the extent possible. Where we were "not able to quantify the effects," we "present[ed] any relevant quantitative information along with a description of the unquantified effects."[100] Contrary to these commenters' assertions, we did not selectively rely upon unquantified benefits while ignoring unquantified costs. In the case of costs that were not initially accounted for in the RIA, but later identified by commenters, we have revised portions of the RIA to incorporate them. As for the largest cost that we were unable to quantify, IT upgrade costs, we fully acknowledge and recognize the importance of assessing this cost in the RIA and describe the difficulties we encountered in trying to obtain meaningful data for these costs. We offer an order-of-magnitude assessment in the qualitative cost section and carry that analysis into the breakeven analysis.

A few commenters took issue with the general approach of the regulatory scheme, whereby the costs would be incurred almost entirely by financial institutions, while the benefits would accrue to society more broadly rather than to financial institutions and their customers, specifically. In their view, this made the CDD rule an impermissible tax upon financial institutions. But this rule is not a tax. Furthermore, we disagree with the characterization of this regulatory scheme as improper or out of the ordinary. There are numerous Federal regulatory schemes that have similar underlying assumptions, structures, and impacts—for example, the costs of some environmental regulations fall predominantly (if not almost exclusively) on producers of emissions (power plants, automobile manufacturers, etc.), while the benefits accrue to the members of society as a whole. Similar to environmental regulations, the CDD rule is meant to correct for a positive spillover that in this case leads to a less-than-efficient level of investment in AML/CFT security measures. Specifically, reductions in illicit activity from the collection of beneficial ownership information will benefit all members of society, but financial institutions will rationally only account for their own benefits when making their investment decisions. By compelling financial institutions to retrieve beneficial ownership information, the CDD rule's intent is to increase investment in AML/CFT measures to a level that results in higher overall wellbeing (even once costs to financial institutions are netted out). Recognizing the costs of implementing the CDD rule, we have made numerous changes to the rule itself, as described in the preamble above, so as to minimize as much as possible the impact of compliance upon covered financial institutions while still furthering the purposes of the rule.

One commenter representing a business formation agent reiterated the recommendation proffered during the NPRM comment period to expand the reliance provision of the beneficial ownership requirement to include non-financial institutions, contending that such an expansion would reduce the costs of compliance. We decline to do so for the reasons articulated in the preamble to the final rule.

During the comment period to the RIA, a few commenters raised substantive concerns about the rule itself that were essentially identical to concerns identified by commenters during the NPRM comment period, such as, among other things, requests to exempt smaller institutions from the rule, and requests to eliminate the verification requirement; these issues have been addressed in the preamble to the final rule.

Cost-Related Comments

Some commenters objected to our overall approach to evaluating the expected costs associated with implementation of the CDD rule. A few of these commenters took issue with the limited sample size of financial institutions that provided the data supporting our quantitative assessment of the costs, and contended that we were required to undertake a fully quantified analysis using a large and representative sample of financial institutions. One commenter representing mid-sized banks stated that the RIA was deficient because it only accounted for the impact of the CDD rule on covered financial institutions writ large, and did not allow for the rule's impact to differ based on a variety of categories, such as size, business lines, structure, geography, or customer base. This commenter asserted that we should have given additional consideration in the RIA to the impact of the CDD rule on small and mid-sized banks, provided additional data from mid-sized banks regarding the expected costs of implementing the CDD rule, and identified additional expected sources of costs not included in the RIA.

As to the assertion that it was inappropriate to rely upon such a small sample size in developing our cost data, we agree that it might arguably have been preferable to obtain specific, granular data from a large and diverse set of financial institutions. However, based on our outreach to financial institutions and IT firms, we determined that it would be impracticable to do so. To further develop our cost data following the NPRM comment period, we identified and assessed all of the comment letters that raised the cost issue with specificity, and substantiated the assertion that FinCEN underestimated the costs associated with implementing the CDD rule with data or a narrative explanation. From this initial review, FinCEN engaged in outreach to many of these commenters to determine their willingness to engage in a more extensive voluntary discussion regarding the cost issues that they raised. To facilitate these commenters' participation in this dialogue, FinCEN identified in advance a number of topics to guide the discussion, including:

- A description of the commenting institution's processes for onboarding legal entity customers and how that

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preferences exhibit transitivity—for alternatives x, y, and z, if x is preferred to y and y is preferred to z, then x is preferred to z. See page 6 of Mas-Colell, Andreu, Michael D. Whinston, and Jerry R. Green. *Microeconomic Theory*. New York: Oxford University Press, 1995.

[99] The canonical model of the economics of crime predicts that the CDD rule would reduce illicit activity by causing criminal actors to perceive a higher risk to setting up financial accounts in support of their illegal activities. Analogously, increased police presence deters criminal activity by increasing its perceived risk. A recent survey of empirical research on how different policing strategies deter crime states: ". . . there is robust evidence that crime responds to increases in police manpower and to many varieties of police redeployments." *See* Chalfin, Aaron and Justin McCrary, "Criminal Deterrence: A Review of the Literature," forthcoming, *Journal of Economic Literature* (2016). Importantly, the authors also discuss their assessment that police tactics characterized by high visibility likely reduce crime more through deterrence than through incapacitation. Therefore, we feel confident in assuming that potential criminal actors are rational in thinking through how they would respond to the imposition of the CDD rule.

[100] OMB Circular A–4.

information is used to comply with AML/CFT requirements;

- the types of documentation required to onboard legal entity customers;
- an estimate of the amount of time it takes to set up legal entity customer accounts;
- the approximate number of legal entity accounts established at the commenting institution on an annual basis;
- anticipated changes to onboarding procedures that would be necessary to identify and verify beneficial owners, consistent with the requirement as proposed in the NPRM, and the approximate costs of such changes;
- the frequency with which the commenting institution updates its computerized onboarding system, as well as the base cost associated with "opening" these systems for updates and the approximate incremental costs associated with each substantive change;
- anticipated changes or updates to other systems required to comply with the requirement as proposed in the NPRM, and the approximate costs of such changes;
- the expected costs and logistical difficulties associated with integrating the Certification Form into the commenting institution's operations;
- additional employee training required to implement the requirement as proposed in the NPRM, and how those costs compare to total annual BSA training expenditures; and
- any additional costs associated with implementing the requirement as proposed in the NPRM that FinCEN did not take into account.

Because we understood that it was likely that such a discussion would necessarily require a detailed description of proprietary business information, we noted that institutions' specific answers would not be made a part of the public record, but informed participants that we might describe responses in general terms without attribution as a part of the rulemaking.

During our outreach discussions, we learned that each institution's onboarding process is different from the others, making it difficult to draw broad conclusions about the types of things covered financial institutions would have to do to implement the rule, from which we could extrapolate generally applicable cost estimates. More importantly, while institutions were generally able to provide estimates of training-related and other expected human resources costs, several of the institutions with which we spoke were unable to provide any estimates about many of the other types of costs they expected to incur to implement the proposed CDD rule, even when pressed to provide rough estimates, or even estimates within a broad range of potential expected costs. Given this lack of usable data, and because FinCEN understands that the majority of financial institutions purchase their systems for entering and storing customer data rather than building the systems internally, we also sought similar information from several of the major vendors that provide these AML/CFT-compliant IT systems. As with the financial institutions, we provided participating IT vendors the same basic topics to guide the discussion (identified above), with modifications to reflect the different role that these vendors play in the onboarding and screening processes. Although we obtained insight into the manner in which many of the major IT vendors work with financial institutions, none were able to provide meaningful quantified estimates of the expected costs associated with modifying their systems, even when pressed for rough estimates or estimates within a wide range of potential costs. For these reasons, we determined that it would likely be futile to conduct a broader survey of financial institutions and vendors to support our analysis. Thus, consistent with OMB guidance, we instead specified the expected sources of costs, and quantified these costs where possible. In order to assess the proposed rule, we relied upon the breakeven analysis, which used an order-of-magnitude assessment of the IT upgrade costs, resulting in an upper bound of $10 billion (identified by most commenters during the NPRM and RIA as by far the most substantial projected outlay) and the highest cost-scenarios for other significant costs quantified in the RIA.

With respect to the concern that we did not adequately account for the impact of the proposed CDD rule upon mid-sized and smaller institutions, we note that throughout this rulemaking process, we have been cognizant of the challenges that such institutions might face when implementing the rule; these concerns contributed to shaping several of the modifications we have made to the rule in order to facilitate its implementation, as described at length in the Section-by-Section Analysis above. For example, in response to comments to the NPRM, we determined that use of the Certification Form would not be mandatory, and financial institutions have the flexibility to utilize their existing onboarding systems to comply with the beneficial ownership certification requirement. During the NPRM comment period, some commenters identified additional categories of entities whose beneficial ownership information is otherwise available, and we excluded these categories from the definition of legal entity customer, further reducing the burden. In response to numerous comments contending that the proposed exclusion for charitable organizations would be difficult to administer, and therefore burdensome, we simplified it. And importantly, in response to many comments regarding the difficulties of implementing the CDD rule within a year of publication of the final rule, we increased the time for financial institutions to comply, to two years. As for the additional sources of cost and additional cost data provided by the commenters, we appreciate this additional information and have incorporated it, where appropriate, into our analysis in the RIA, as described below.

Some commenters asserted that we underestimated certain costs, and failed to account for other steps that financial institutions would have to take to comply with the proposed CDD rule in our cost analysis. We address these comments here.

Customer Onboarding. A few commenters asserted that our time estimates for onboarding were too low. In response to these comments, we have made adjustments to the calculations in the RIA, as described in greater detail therein. Some of these commenters also asserted that our hourly wage figures for "new account clerks" was too low, noting that the average wage for their clerks was substantially higher. While we certainly recognize that the wages earned by account clerks in large metropolitan areas characterized by elevated cost of living will be higher than the average, those wage levels are not representative of the wages for the entire country (in the same way that wages for account clerks in rural areas of the United States characterized by very low cost of living would not accurately represent wages for the whole country). Given that the average occupational wages produced by the Bureau of Labor Statistics use wage data from throughout the United States—taking into account variation in wages for the same occupation across all of the very different local labor markets—we believe that the national average for account clerks is representative and therefore decline to use a different wage for these calculations.

One commenter also asserted that we mischaracterized the manner in which this additional onboarding time would be incorporated into the onboarding process, contending that our view was founded on "the plainly incorrect assumption that the additional documentation required under the proposed CDD Rules can be collected in one (slightly longer) meeting." Contrary to this notion, our assessment of the additional incremental time for onboarding was not premised on this assumption. Indeed, it has been our understanding that, as this commenter noted, "[f]inancial institutions typically offer clients a period of time, such as 30 days, to gather the appropriate account opening documentation, and the process routinely takes more than one meeting." This characterization of current practices underscores one of our broader points about our expectation that the additional burden on prospective customers after the final rule is in force will be limited—that is, it is *already the case* that prospective business customers who seek to open accounts at financial institutions often do not have on hand all the documentation required (including CIP information), and that financial institutions have practices in place to inform these prospective customers of the documentation they need to provide in order to open an account. We would expect these existing practices to be leveraged, and that an institution's practices for collection of this information for legal entity customers would not deviate substantially from those described above.

Developing and Conducting Employee Training. A few commenters noted that we did not account for the costs associated with designing and conducting training of employees on the new obligations in the CDD rule (as distinct from the cost to financial institutions of employees' time spent in training, for which we did account in the RIA). In response to these comments, we have added a new section incorporating these costs into the RIA, as described in greater detail therein.

Revising Policies and Procedures. A few commenters observed that the RIA did not account for costs associated with revisions to policies and procedures that would be necessary as a part of implementing the CDD rule. In response to these comments, we have added a new section incorporating these costs into the RIA, as described in greater detail therein.

Additional Costs for Internal Controls. Some commenters noted that the RIA did not account for additional costs for internal controls, including compliance reviews, relating to the collection of beneficial ownership information. As noted in the RIA, because of the lack of actual estimates of such costs, we have not included them in the aggregate quantified costs of the rule. We believe, however, that the actual additional costs for internal controls will be small in comparison to the quantified costs included in the RIA, particularly the upper bound in the order-of-magnitude assessment for IT upgrade costs, and thus that not including these additional internal control costs does not influence the RIA's conclusion.

Costs Associated with Additional SAR Investigation and Filing. A few commenters noted that there would likely be additional costs for financial institutions associated with investigating and reporting SARs that should have been accounted for in the RIA. However, as described in the RIA, given the difficulty of determining whether the final rule would result in additional costs of this nature and if so, their amount, we have not attempted to quantify such costs.

Employee Training Costs. One commenter representing banks asserted that respondents to its survey about implementation costs believed that on average, employees would require three times the amount of training identified by the RIA. This commenter did not, however, provide any explanation of the basis for this estimate, the assumptions used to generate this estimate, nor any dollar figure estimates. Nor did the commenter state whether this treble estimate pertained to the low or high end of the range described in the RIA (though we presume this multiplier applies to the high end of the range) or whether it applied to training in the first year or to refresher training. All of the other commenters addressing this issue articulated estimated costs that fell within the range identified in the RIA. For this reason, we decline to alter the estimated costs associated with employee training (except as described above).

Information Technology Costs. One commenter representing banks contended that FinCEN did not adequately account for the costs associated with IT upgrades in the RIA. This assertion is an inaccurate characterization of our approach to IT costs. As described at length above, FinCEN unsuccessfully attempted to obtain detailed figures for these upgrade costs, in part necessitating the order-of-magnitude analysis. This analysis directly accounted for IT upgrade costs by assessing the order-of-magnitude based on limited data, which resulted in an upper bound of $10 billion (derived from the rough estimates provided by some financial institutions).[101]

Costs Associated with Lost Business/ "De-Risking." A few commenters took issue with the decision not to include costs associated with lost business attributable to either privacy-minded owners of legal entity customers declining to open accounts or financial institutions refusing to extend accounts to legal entity customers for which they cannot obtain the owners' personal information. In the views of some commenters, a substantial number of owners of small businesses would flee to unregulated sources of financing because of their aversion to providing personal information to covered financial institutions during the account-opening process. To the same effect, one commenter representing banks asserted that the proposed CDD rule would "likely contribute to 'de-risking,' as many financial institutions will find it increasingly difficult to open accounts or extend credit where the risk of correctly identifying the beneficial owners cannot be managed to the satisfaction of regulatory requirements."

As for deposit or transaction accounts as well as most credit products, FinCEN is not persuaded that the beneficial ownership requirement would have a meaningful effect on the behavior of the vast majority of owners of legal entities subject to it. Legitimate businesses need transaction accounts within the financial system to conduct their business, and in many cases, it would be extraordinarily difficult (as well as far more risky and costly) to operate solely using cash or through unregulated entities. Furthermore, we do not expect most owners of legal entity customers to be so averse to providing their personal information to covered financial institutions that they refuse to open an account, particularly considering that they have to provide the same type of personal information to open individual accounts at those institutions. In any event, the cost of such aversion—essentially being unbanked—would be high, for the reasons given above. Moreover, irrespective of one's views on the disclosure of personal information in business relationships, such information is routinely required for a variety of commercial interactions, such as obtaining an insurance policy, or verifying eligibility for employment in the United States via U.S. Customs and Immigration Services Form I–9. We accordingly reject the contention put forth by one commenter that it would be "virtually impossible . . . to convince some beneficial owners to provide their personal information" on the grounds that many people are "especially sensitive to disclosing personal information" (although we recognize and appreciate this concern as a general matter).

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[101] Some commenters to the preliminary RIA and IRFA stated that they believed that they would need to install expensive IT upgrades in order to track changes in beneficial ownership information, in order to comply with the requirements of the proposed amendments to the respective AML program rules. FinCEN believes that these comments are based on a misunderstanding of those proposed requirements. As a result, FinCEN has revised this proposed requirement, as explained in the Section-by-Section Analysis.

For these same reasons, we do not believe that the beneficial ownership requirement would produce a significant "de-risking" effect as identified by the commenter above. As we note in the preamble to the final rule, covered financial institutions will generally be allowed to rely upon the representations of the legal entity customer regarding their ownership structure, substantially mitigating what this commenter identified as the principal driver of "de-risking."

With respect to the issue of potential lost business, while FinCEN believes it is the case that legitimate businesses need transaction accounts from banks, this is not necessarily the case with respect to certain specialized types of credit products, which can also be obtained from unregulated competitors. We have given careful consideration to the comments describing the expected impact of imposing this requirement upon specialized types of accounts in markets where the increased burden would likely drive prospective customers into unregulated alternatives. As we describe in greater detail above in the Section-by-Section Analysis, we believe the policy reasons for exempting these types of accounts from the scope of the rule proffered by commenters are compelling, and we have accordingly exempted such accounts from the scope of the beneficial ownership requirement. We therefore do not have to account for this type of possible flight as a cost of the rule.

Other Miscellaneous Costs. Several trade association commenters identified a variety of sources of costs that were not widely applicable to the institutions they represented. For example, one of these commenters who surveyed a group of banks noted that a few of these banks identified costs, such as those accruing to one bank's financial investigative unit, that were not identified by others. However, because such costs cannot be quantified, they are not included in the RIA. Yet because we are confident that the actual miscellaneous costs incurred will likely be very small compared to the included quantified costs in the RIA, in particular the improbably high value for IT upgrade costs, we firmly believe that excluding these miscellaneous costs does not affect the RIA's conclusion.

Benefit-Related Comments

Several commenters questioned the assumption that the beneficial ownership requirement would produce useful information, contending, among other things, that criminals would easily avoid the requirement by simply lying on the Certification Form, or by employing an unaffiliated individual for the sole purpose of opening an account. They also questioned the value of the information provided when there are no means of verifying the person's status as a beneficial owner. One commenter suggested that illicit actors might evade the requirement entirely by simply setting up a complex structure of shell companies. We address these contentions in turn.

We first accept the uncontroversial notion that criminal actors will generally seek to evade legal and regulatory requirements as they carry out their illicit schemes but stress that as the probability of detection in carrying out these schemes increases, some criminals would be less likely to engage in these illegal activities (at least through the U.S. financial system). While it is the case that clever illicit actors can and sometimes do evade many such requirements through deceit or trickery, "criminals will lie" is a truism that could be used to justify the elimination of any number of criminal and regulatory prohibitions, and is insufficient justification here. This fundamental practice does not obviate the significant benefits to law enforcement and regulatory authorities associated with identifying and verifying the identity of at least one natural person associated with legal entities later determined to be engaged in illicit activity. Illicit actors may well set up complex webs of shell companies or structure their ownership so as to increase the difficulty of determining the individual who in fact owns the entity; it is because of this vulnerability that legal entities are also required to provide the name of one natural person under the control prong. And while a criminal may well lie regarding a legal entity's beneficial ownership information, verification of the identity of the natural person(s) identified as a beneficial owner will limit her ability to do so in a meaningful way such that she could avoid scrutiny entirely. Furthermore, as the Department of Justice has noted throughout this rulemaking process, a falsified beneficial ownership identification would be valuable evidence in demonstrating criminal intent. Even the verified identity of a natural person whose status as a beneficial owner has not been verified provides law enforcement and regulatory authorities with an investigatory lead from whom they can develop an understanding of the legal entity. Although we accept that it would be theoretically possible for an illicit actor to hire a random person to set up an account for her shell company at a covered financial institution, we question the wisdom and practicality of effectively giving a stranger access and control, even if only for a limited time, to something as important as a financial institution account.

Along the line of these criticisms, some of these commenters contended that we did not demonstrate a sufficiently strong link between the expected law enforcement and regulatory benefits and the reduction in illicit flows that we identified as the principal measure of benefit in our breakeven analysis. As described at length in the RIA, there are myriad complex factors that contribute to whether criminal and regulatory investigations are initiated and pursued, and whether prosecutions are brought and successfully concluded, and it would not be possible to demonstrate the causative effect of any single factor, such as the introduction of the CDD rule, on these outcomes. We believe, for the reasons we describe in the RIA, that the beneficial ownership requirement would reduce annual illicit flows in the U.S. both by deterring their entry into the U.S. financial system, and stemming them entirely through convictions and forfeitures.

A few commenters challenged our decision to identify compliance with international standards as a benefit weighed in the RIA. In response, we note that OMB guidance recognizes that "[h]armonization of U.S. and international rules may require a strong Federal regulatory role." [102]

Other Issues

A few commenters asserted that FinCEN's consideration of regulatory alternatives was inadequate. They thought, for example, that FinCEN should consider requiring the collection and verification of this information by states at the time of company formation, or that such information should be collected by the IRS through the tax filing system. We discuss these additional alternatives in the RIA.

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[102] OMB Circular A–4.

As noted above, several commenters requested that FinCEN exclude from the scope of the beneficial ownership requirement certain types of specialized accounts, such as accounts established for the purpose of financing property and casualty insurance premiums; accounts established to finance the leasing of heavy machinery and equipment; and accounts established to finance postage and related items. These requests have been addressed in the Section-by-Section Analysis above.

B. Final Regulatory Impact Assessment

1. Executive Summary

The primary purpose of customer due diligence (CDD) requirements is to assist financial investigations by law enforcement, with the goal being to impair criminals' ability to exploit the anonymity provided by the use of legal entities to engage in financial crimes including fraud and money laundering, and also terrorist financing, corruption, and sanctions evasion. Treasury presents expected cost estimates for some requirements and qualitative assessment of other cost components and the benefits. In addition to the qualitative benefit assessment, we present a breakeven analysis to assess the level of benefits that would justify incurring the quantified costs associated with this rule. Treasury acknowledges that there are uncertainties associated with this assessment and discusses those uncertainties in this Regulatory Impact Assessment (RIA). Although data and modeling limitations prevent us from fully quantifying all costs and benefits attributable to the CDD rule, the U.S. Department of the Treasury believes that the final rule would yield a positive net benefit to society.

The RIA employs a breakeven analysis that concludes that the CDD rule would have to induce a modest reduction of between 0.16 and 0.6 percent in annual U.S. real illicit proceeds in each of ten years (2016–2025) to achieve this positive net benefit. If the definition of illicit proceeds is expanded to include money exchanged in illicit drug sales, which, as described in the RIA, are not always included in such measurements, then the analogous required reduction must be between 0.12 and 0.47 percent. For either set of illicit activities, this would correspond to a reduction in real proceeds ranging from $1.46 billion in 2016 to $1.81 billion in 2025, at the upper bound for IT upgrade costs. The analogous reductions at the lower bound of IT upgrade costs are $0.38 billion and $0.47 billion.

This RIA argues, however, that both of the above upper threshold estimates are exceedingly conservative in that they are based on an upper bound for the rule's costs while not incorporating all of its benefits.[103] Specifically, the estimates:

- Are based on an order-of-magnitude cost assessment with an upper bound present value for 10-year IT upgrade costs of $10 billion;
- incorporate the highest cost scenarios for the costs that are quantified in the RIA—financial institution employee training (including the development of this training), new client onboarding, and the revision of policies and procedures;
- are not in relation to, and therefore do not account for, all of the benefits that would be realized in the form of saved costs from crimes that would not occur in the presence of the rule because any reduction in illicit proceeds would only reflect saved costs in the form of *funds* no longer involuntarily transferred from victims to offenders; the excluded benefits include, for example, time not devoted to handling the aftermath of—for example—fraud victimization, and psychological pain and suffering not experienced due to those fraud victimizations avoided; and
- are not in relation to, and therefore do not account for, other effects discussed in the RIA, including increased asset recovery, increased tax revenue due to stronger tools for detecting and remediating under reporting and under payment of Federal taxes, and reputational benefits to the U.S. Government of meeting international standards.

Therefore, even though the RIA assumes high IT costs, we find that the final CDD rule would still only need to exhibit a modest level of effectiveness for its benefits to justify its costs as laid out in the RIA. It is the view of the Treasury Department that these reductions in illicit activity would be achieved upon the implementation of the CDD rule.

2. Introduction and Summary

a. Overview of the RIA

The Financial Crimes Enforcement Network (FinCEN) is publishing rules under the Bank Secrecy Act to clarify and strengthen customer due diligence (CDD) requirements for the following financial institutions: Banks, brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities. The final rule contains explicit CDD provisions and a new regulatory requirement to identify beneficial owners of legal entity customers. The beneficial owners are defined as each individual who owns, directly or indirectly, 25 percent or more of the equity interests of the entity, and one individual with significant responsibility to control, manage, or direct the entity.[104]

The final CDD rule is expected to contribute to a reduction in illicit activity by providing easier access to beneficial ownership information to support law enforcement investigations at the expense of additional costs to gather and store the data on the beneficial owners of legal entity accounts. We expect that there will be a meaningful impact on illicit activity and law enforcement investigations, but these effects are notoriously difficult to quantify. Thus, we can only describe the rule's benefits qualitatively. We later offer a conservative estimate of the required minimum level of the rule's effectiveness at which its benefits would just offset its costs.

We quantify certain costs to financial institutions and their clients of complying with the final rule, specifically the value of additional time spent on these activities: Training financial institution staff, designing and conducting staff trainings, revising compliance policies and procedures, and onboarding new accounts. Throughout this analysis, we use a "no action" baseline, meaning that we compute and discuss costs and benefits of the final rule relative to a situation where the rule is not adopted. We estimate that these first-year costs would range from roughly $370 million to $520 million. Close to half of the costs incurred over 10 years would be borne by customers in additional time spent opening accounts, with the other half due to additional staff time devoted to training, compliance, and account onboarding at the roughly 29,000 covered institutions.[105] Training costs

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[103] The estimated thresholds for the percent reduction in real illicit proceeds are assumed to be constant across each year of the ten-year horizon for the given set of illicit activities, and computed using an upper bound for costs based on estimated and hypothetical values. At the threshold estimates, the present value of the rule's benefits would just be equal to the present value of its costs.

[104] Treasury's Office of Economic Policy worked with FinCEN to prepare this Assessment pursuant to Executive Orders 13563 and 12866 because the proposed rules have been determined by the Office of Management and Budget (OMB) to be an economically significant regulatory action. The Notice of Proposed Rulemaking was published at 79 FR 45151 (August 4, 2014).

[105] The Treasury Department computed the number of covered institutions based on

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would fall sharply after the first year as the majority of first-year costs are due to time spent designing training modules for employees, a cost that we assume will not recur after the first year. We estimate that 10-year quantifiable costs range from $1.15 billion to $2.15 billion in present value using a seven-percent discount rate and from $1.3 billion to $2.5 billion using a three-percent discount rate. The annualized costs range from $153 million to $287 million using a seven-percent discount rate; $148 million to $282 million using a three-percent discount rate.

As described at greater length below in the breakeven analysis, given even an unrealistically high hypothetical value for the rule's total costs, the CDD rule would only have to reduce annual real illicit activity by between 0.16 percent (roughly $0.38 billion in 2016, rising to 0.47 billion in 2025) and 0.6 percent (roughly $1.46 billion in 2016, rising to $1.81 billion in 2025), to yield a positive net benefit (the required reduction in illicit proceeds would only be between 0.12 percent and 0.47 percent if proceeds from illicit drug sales are included).[106] [107]

To summarize: This cost-benefit analysis provides a qualitative discussion of the rule's benefits and some costs, and quantitative estimates of those costs for which adequate data are available. Due to the limited availability of data on illicit activity and in the absence of previous changes in beneficial ownership disclosure policy, the final rule's effects in terms of reducing such crime cannot be estimated with sufficient accuracy to warrant quantitative assessment. In the absence of fully quantified benefits and costs, we rely on a breakeven analysis to determine how large the final rule's benefits would have to be in order to justify its costs. Given that the breakeven analysis depends on an argument about the final rule's effectiveness in generating benefits, and that the benefit of a crime prevented is the inverse of that crime's cost,[108] we need a value for the costs of the crimes that the rule would impact. For this specific regulation's RIA, we choose to utilize the Treasury Department's estimate of $300 billion in illicit proceeds generated annually in the United States due to financial crimes as the basis for determining the rule's minimum level of effectiveness in the breakeven analysis, at which benefits would exactly justify costs. The whole of these proceeds must be laundered before they can re-enter the economy under a guise of legitimacy.[109]

The remainder of this section provides the rationale for the CDD rule, discusses regulatory alternatives, and summarizes the findings of the cost-benefit analysis. The second section reports quantitative estimates of certain costs; the third section provides a qualitative discussion of benefits and those costs that we cannot quantify; the fourth and final section employs a breakeven analysis to make the case for the adoption of the final rule.

b. Rationale for the CDD Rule

Under certain circumstances, markets lead to socially desirable allocations of goods and services. Yet when all the necessary conditions are not met, a market's allocation of goods may not be efficient, a situation known as a *market failure*. Economists consider the presence of a market failure to be a justification for policy intervention. The final CDD rule intends to address two related market failures. Both of these are *spillovers* (also called *externalities*) in that the wellbeing of parties *not* buying or selling in a market is impacted by transactions in that market. Spillovers can either be positive or negative. For example, a positive spillover occurs in the market for influenza vaccinations: Those who receive the vaccine reduce the chances of others who do not receive the vaccine from catching the flu. From the perspective of society's overall wellbeing, the existence of a positive spillover implies that fewer transactions are taking place in the market in question than is socially optimal. Conversely, in the case of a negative spillover, too many transactions occur, resulting in lower societal wellbeing. For example, a paper mill that pollutes a river by releasing wastewater may negatively affect recreational fishermen downstream who may find fewer fish or be unable to eat the fish they catch due to the pollution.[110] We discuss the spillovers addressed by the CDD rule in more detail below.

Illegal activities are social "bads" rather than social goods. Because financial institutions bear the cost of collecting the beneficial ownership information, they only take into account their own benefit to doing so when selecting their level of investment in crime-reducing security measures.[111] The implication is that financial institutions underinvest in such measures from the standpoint of society. If all members of society are potential victims of future criminal activity, then the prevention of financial crimes including money laundering and terrorist financing have the characteristics of public goods, meaning that all citizens benefit from actions to

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information provided by the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Commission. The Treasury Department did not conduct an incidence analysis as to whether the regulated entities will be able to pass along the costs to their customers ultimately.

[106] This calculation uses the $300 billion estimate for annual illicit proceeds generated in the United States on page 2 of U.S. Department of the Treasury. Office of Terrorism and Financial Intelligence. 2015. *National Money Laundering Risk Assessment*.

[107] The distinction between illicit proceeds that include and exclude money exchanged in illicit drug sales matters for the interpretation of proceeds as costs of crime. As discussed later, illicit proceeds that are involuntarily transferred from victims to offenders—for example, via fraud—are naturally counted among "external" costs of crime. On the other hand, illicit proceeds from transactions that are arguably voluntary, like illicit drug sales, do not fit into the set of external costs so readily. To the extent that the size of proceeds from illicit drug sales are indicative of the costs to society of the drugs consumed from those transactions—loss of health and quality of life and lost labor market productivity, among many others—then this justifies using the broader measure of illicit activity (*i.e.,* including drug sales) for estimating the social benefits of reduced crime. Although in this instance we are not accounting for the effects of the proposed rule on other types of illicit activity (*e.g.,* terrorist financing) in the breakeven analysis, the CDD rule would potentially impact the likelihood of low probability, high impact events occurring. Such reductions have the potential to yield significant benefits. For example, the costs of terrorism and financial crime can run into the billions of dollars in terms of property destruction, foregone tax revenues, and loss of life. The American Academy of Actuaries has estimated that a medium-impact scenario involving a chemical, nuclear, biological, or radiological attack in New York City could result in insured losses of over $445 billion, while a truck bomb attack in San Francisco could result in insured losses of nearly $9 billion. "Letter to President's Working Group on Financial Markets regarding Terrorism Risk Analysis," American Academy of Actuaries, April 21, 2006.

[108] The terms "costs" and "benefits" can be interchangeable depending on whether one is examining the effect of crime or the effectiveness of a crime reduction program. See page 276 of Cohen, Mark A., "Measuring the Costs and Benefits of Crime and Justice," *Criminal Justice* 4 (2000): 263–315 (". . . the cost of a crime is the same as the benefit of a crime that was prevented").

[109] See footnote 106.

[110] Whether the spillover is positive or negative, the market failure is attributable to the lack of a second market that would allow participants and nonparticipants in the market with the spillover to compensate one another so that the quantity produced and consumed is socially optimal in the market with the spillover. For example, the fishermen have no formal mechanism for paying the owners of the paper mill to produce less wastewater by producing less paper. The implication of this "missing market" is that the overall wellbeing might be lower than what society would be willing to pay for, if it could.

[111] Even in the extreme case where financial institutions could pass along the entire cost of collecting this information, it does not follow that the resulting level of investment in crime-reducing security measures would maximize social wellbeing. Realistically, competition among financial institutions for clients will limit the extent to which they can pass these costs along to customers.

mitigate these activities regardless of who pays for the prevention.

Absent this final rule, financial institutions will continue to invest at lower than efficient levels, in accordance with their private interests, neglecting the incremental positive impact of each additional dollar spent on security measures on broader social welfare. This is especially true if financial institutions that are considering collecting beneficial ownership information perceive that they would lose business to competitors that do not require that information. By compelling universal compliance across all covered institutions, implementation of the final rule would increase beneficial ownership disclosure at financial institutions, making illicit activities more costly to commit.

Without the final rule, the negative spillover arises because a country with less stringent anti-money laundering and countering the financing of terrorism (AML/CFT) regulations may become a destination for the laundering of proceeds generated by illicit activities committed in other countries. The country with less stringent rules and regulations receives the inflow of capital without bearing the costs of the criminal offenses that created that inflow of capital. International cooperation that harmonizes AML/CFT policies may reduce this market failure. By helping to harmonize U.S. standards with those of the global community, adopting this final rule would make laundering the proceeds in the United States from illicit activities committed in the other countries more costly and thereby mitigate the current negative spillover.

c. Discussion of Regulatory Alternatives to the Final CDD Rule

In this section, we discuss five alternatives to the final CDD rule, which will set a 25 percent beneficial ownership disclosure threshold for new legal entity accounts. The first three alternatives are variants of the CDD rule, while the remaining two are alternative regulatory approaches:

Alternative 1: 10 percent beneficial ownership disclosure threshold.

Alternative 2: 50 percent beneficial ownership disclosure threshold.

Alternative 3: Applying the proposed 25 percent beneficial ownership disclosure threshold to *existing* legal entity accounts, as well as to new accounts.

Alternative 4: Collection and verification of the identities of beneficial owners by State officials at the time of company formation.

Alternative 5: Collection and verification of the identities of beneficial owners by the Internal Revenue Service (IRS).

Alternative 6: Exempt financial institutions below a certain asset size, or that maintain fewer than a specified minimum number of legal entity accounts.

Alternative 1, setting a 10 percent beneficial ownership threshold, would provide more information to potentially identify individuals involved in illicit financial activity. Collecting information for a maximum of 11 people[112] can potentially identify illicit financing through owners of stakes as small as 10 percent. However, as a practical matter, we believe that this threshold would predominantly impact legitimate legal entities, and impose upon them a significant burden that would not be outweighed by the incremental benefit to law enforcement of additional identities of beneficial owners. Such a change would also come at higher costs in terms of more financial institution and client onboarding time (in some instances, up to twice as much, since the maximum number of beneficial owners would be more than doubled from a maximum of five to a maximum of eleven) and additional data storage. In FinCEN's assessment, the incremental benefit of this approach does not outweigh the burdens associated with having to collect and verify the identities of more than twice as many beneficial owners in some circumstances. Incremental costs to financial institutions for IT updates, staff training, and internal controls, above and beyond those incurred for the final rule, would likely be limited.

Alternative 2, setting a 50 percent beneficial ownership threshold, is less stringent, but provides less information to potentially identify those involved in illicit financing. Using a 50 percent threshold would forego information on owners of stakes as high as 49 percent. Furthermore, setting the threshold this high would render the rule more susceptible to evasion, as beneficial owners of legal entities could more easily manage their ownership interests to fall below this level than 25 percent. Requiring personal information for a maximum of three people[113] would somewhat reduce data collection costs to financial institutions and their customers' costs. But, because major cost elements such as IT updates, staff training, and internal controls would still be incurred by financial institutions, overall savings would probably be limited relative to the final rule. We cannot quantify how much the benefit from the final rule would be reduced by this higher threshold for disclosure but are confident that with this threshold illicit actors would have greater ease in using legal entities to mask their financial activities than with the proposed threshold.

Alternative 3 would apply the same beneficial ownership disclosure threshold as the final rule to new accounts, but would also require retroactive collection of beneficial ownership information for existing accounts at the time the rule comes into force. The increased costs from complying with Alternative 3 would likely take the form of significant labor costs as financial institutions hired additional workers to gather beneficial ownership data from customers and input it into account databases. Alternative 3 would also impose costs on existing customers of covered financial institutions. We do not foresee additional IT development costs beyond those for the final rule. We expect that the above-described costs would be substantial. In the 2012 ANPRM, FinCEN sought comments on whether to require retroactive collection of beneficial ownership information for existing accounts. Many commenters to the ANPRM viewed a retroactive requirement to obtain beneficial ownership information for all existing accounts as extremely burdensome, and opposed such a requirement. In light of these representations about the burdens associated with such a requirement, FinCEN proposed in the NPRM that the beneficial ownership requirement would apply only with respect to legal entity customers that open new accounts going forward from the Applicability Date. During the NPRM comment period, the vast majority of commenters who addressed this issue reiterated this objection to retroactive application of the beneficial ownership obligation. Alternative 3 may offer substantially larger benefits than the final rule because it would make available beneficial ownership information for far more accounts than the final rule, as the stock of existing accounts covered would greatly exceed the flow of new accounts. The advantage in terms of greater beneficial ownership information would fall over time; the higher requirements of Alternative 3 may also require a later deadline for compliance.

As to Alternative 4, many commenters stated that it would be more efficient, as well as more appropriate, to place the obligation to obtain beneficial ownership information on the States that create the entities rather than on financial institutions at the time that accounts are opened. While the existence of such a requirement may reduce some costs that would be borne by financial institutions under the rule, Treasury believes that it would not eliminate the need for an independent obligation of covered financial institutions to collect and verify the beneficial ownership information at the time an account is opened. Additionally, as stated in the NPRM, the Administration supports the collection of this information at both the time of company formation and at the time an account is opened. There are important reasons for this: (i) Company formation and account opening generally take place at different points in time which may result in the information changing; and (ii) there is no requirement for a legal entity formed in the United States to open a bank account in the United States, nor is there a bar on non-U.S. legal entities opening accounts in the United States. Therefore it is important to have requirements that apply to both points of entry. In addition, there are Constitutional impediments on the manner and extent to which the Federal government could impose such a requirement on the States, as there is no Constitutional provision authorizing the Federal government to directly mandate that States collect such information. Furthermore, without concerted action on such a proposal by all 50 States and the District of Columbia, we would expect illicit actors to simply incorporate in those States without such a requirement. Such gaps would obviate the benefit of such a requirement at the State level.

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[112] Under the two elements of the definition of beneficial owner described earlier, up to 10 individuals under the ownership element and one individual under the control element.

[113] Two individuals under the ownership element and one individual under the control element.

With respect to Alternative 5, some commenters also urged that beneficial ownership information could more efficiently be collected by Federal officials at the IRS through the process of obtaining Employer Identification Numbers for legal entities, which would shift the costs from financial institutions to government. For the reasons stated above, Treasury believes that collection and verification of beneficial ownership information is necessary and valuable both at the time of company formation and at the time of account opening. Moreover, FinCEN lacks the authority to impose such an information collection requirement upon the IRS, and because of the sensitive nature of tax information and the many statutory restrictions on the use of such information in order to protect taxpayers' privacy, legislative changes to the tax code would be required.

Regarding Alternative 6, FinCEN also considered exempting small financial institutions below a certain asset size or that have a minimal number of legal entity accounts. In this regard, FinCEN has determined that identifying the beneficial owner of a financial institution's legal entity customers and verifying that identity is a necessary part of an effective AML program. Were FinCEN to exempt small entities from this requirement, or entities that establish fewer than a limited number of accounts for legal entities, those financial institutions would be at greater risk of abuse by money launderers and other financial criminals, as criminals would identify institutions without this requirement.

d. Summary of Findings

i. Costs

(1) Quantitative Assessment

In response to comments that our compliance cost estimates in the proposed rule were unrealistically low, we conducted telephone interviews with financial institutions that submitted comments, as well as with IT vendors which currently supply related AML/CFT software to financial institutions.[114] Using information from those interviews, we estimate the cost to financial institutions and their clients of the additional time required to open new legal entity accounts under the CDD rule, and the costs to financial institution costs for employee training and the revision of AML program procedures. For a discount rate of seven percent, Table 1a lists the high-cost and low-cost estimates for each of the quantified categories of costs incurred in the first year alone, in the first ten years in terms of present value, and on annual basis over the first ten years.[115]

TABLE 1a—QUANTIFIED COSTS FOR 7% DISCOUNT RATE

[Millions of USD]

	Financial institution				
	Training	Onboarding	Compliance	Client	Total
First-Year Costs:					
Low Estimate	$211	$45	$55	$61	$371
High Estimate	256	89	55	121	521
Present Value of 10-Year Costs:					
Low Estimate	264	353	55	477	1,149
High Estimate	439	705	55	955	2,154
Annualized Costs:					
Low Estimate	35	47	7	64	153
High Estimate	59	94	7	127	287

Source: Treasury Department calculations.

Note: First year of analysis is 2016. All figures in 2014 dollars.

We estimate that first-year costs would range from roughly $370 million to $520 million; training costs would be lower in subsequent years. Furthermore, we estimate that the 10-year costs range from roughly $1.15 billion to $2.15 billion in present value and that annualized costs would range from approximately $150 million to $290 million. Table 1b reports the analogous costs for a three-percent discount rate. For this lower discount rate, first-year costs are unchanged, but we estimate that the 10-year cost range shifts up to roughly $1.3 billion to $2.5 billion while the annualized costs shift down slightly to a range of $150 million to $290 million.

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[114] Treasury understands that most financial institutions do not build their own systems for entering and storing data regarding their customers, but rather purchase such systems from third parties that specialize in providing such products to financial institutions.

[115] The annualized cost value is the undiscounted constant annual cost incurred in each of the ten years that, if it occurred, would yield the value for the corresponding "present value of 10-year costs" entry in the table after the stream of costs were discounted (using the seven-percent rate in Table 1a) and summed. For example, a 10-year stream of $59 million (the "High Estimate" annualized cost for training in Table 1a) has a present value of $439 million using the seven-percent discount rate.

TABLE 1b—QUANTIFIED COSTS FOR 3% DISCOUNT RATE
[Millions of USD]

	Financial institution				
	Training	Onboarding	Compliance	Client	Total
First-Year Costs:					
Low Estimate	$211	$45	$55	$61	$371
High Estimate	256	89	55	121	521
Present Value of 10-Year Costs:					
Low Estimate	274	414	55	560	1,303
High Estimate	476	827	55	1,120	2,479
Annualized Costs:					
Low Estimate	31	47	6	64	148
High Estimate	54	94	6	128	282

Source: Treasury Department calculations.
Note: First year of analysis is 2016. All figures in 2014 dollars.

(2) Qualitative Assessment

Several types of costs associated with the implementation of this rule cannot be reliably quantified due to a lack of data. For example, we provide qualitative discussions of information technology upgrades by covered institutions and incremental costs to U.S. criminal investigations because the data are insufficient for quantitative assessments.

ii. Benefits

The primary purpose of the final CDD rule is to reduce illicit activity, including financial crimes such as money laundering and terrorist financing. Yet, none of the benefits of the final rule, in terms of reducing crime, can be measured with sufficient accuracy at this time to warrant quantitative assessment. Two primary factors impede credible quantitative estimation of the rule's benefits: Illicit activity is difficult to observe, meaning that reported measures are likely unreliable, and there is no past variation in beneficial ownership requirements in the United States from which to estimate the effects on outcomes.

Furthermore, estimation of effects of policy changes using historical data is challenging in this context. Existing AML/CFT regulations under the Bank Secrecy Act and subsequent legislation already help mitigate financial crimes including money laundering and terrorist financing. In addition, extensive changes in the United States and international regulatory regimes following the financial crisis of 2008 further complicate the estimation of potential effects of any change in the CDD rule, as even changes to non-AML/CFT regulations may alter regulated parties' behavior in ways that make it difficult to attribute potential effects to the CDD rule alone. Ongoing financial regulatory reforms, including for example, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, add to the challenge of assessing the potential impacts of this final rule. Finally, changing external factors such as evolving AML/CFT policies of foreign governments and management practices of overseas financial institutions may affect the level of illicit activities in the United States, including through cross-border institutions.

For all of the above reasons and others, this cost-benefit analysis relies extensively on a qualitative assessment of potential effects, based on relevant literature. Finally, while we believe that a significant increase in, for example, the number of prosecutions for money laundering, following the CDD rule's possible adoption would signal its effectiveness in diminishing the level of criminal activity, given the time required to build and prosecute cases, that sort of quantitative assessment would not be possible for several years.

3. Quantitative Estimates of Costs

a. Costs to Covered Institutions

i. Employee Training

We generate high- and low-cost estimates of the training costs to covered institutions based on input from the institutions and data from the Bureau of Labor Statistics (BLS). These estimates pertain only to the training costs directly associated with the final rule, not the full set of training activities needed to address the broader set of AML/CFT regulations for financial institutions. Based on the total number of employees and the employee-weighted average hourly wage at covered institutions, we estimate high- and low-cost scenarios by varying the share of employees receiving training and the length of that training.[116] The high-cost estimate assumes two-thirds of covered institution employees receive training, and one-time initial training runs for one hour while subsequent annual refresher trainings last 15 minutes. The low-cost estimates assume one-third of employees are trained, the initial training takes 30 minutes, and the annual refresher trainings run 10 minutes.

In both the high-cost and low-cost estimates, we make four main assumptions. First, we assume the opportunity cost of staff time spent in training is equal to the wage rate rather than total compensation (wage rate plus benefits).[117] Second, we apply the BLS 2012–22 projected employment growth rate of 0.9 percent per year for Financial Activities to our 10-year time horizon.[118] Third, we use the aggregate annual real wage growth rate of 1.2 percent (rounded intermediate assumption) from the 2015 Social Security Trustees Report.[119] Finally, we assume that staff turnover rates are consistent with the rates provided in the Finance and Insurance sector in the BLS

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[116] To represent the workforce in covered institutions, we use wage data for all employees working in business establishments in sectors having one of the following four-digit North American Industry Classification System (NAICS) codes: 5221 (Depository Credit Intermediation), 5222 (Nondepository Credit Intermediation), 5223 (Activities Related to Credit Intermediation), or 5231 (Securities and Commodity Contracts Intermediation and Brokerage).

[117] This assumption results in a higher opportunity cost of training than might be warranted if employees' brief time in training mostly displaces less-than-fully productive activities.

[118] BLS. 2013. "Industry Employment and Output Projections to 2022," *Monthly Labor Review. http://www.bls.gov/opub/mlr/2013/article/industry-employment-and-output-projections-to-2022.html.*

[119] The Board of Trustees, Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds. 2015. *The 2015 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds. http://www.ssa.gov/oact/tr/2015/tr2015.pdf.*

Job Openings and Turnover Survey.[120] We believe this set of assumptions yields estimates that account for the primary factors that may affect costs in the period of analysis.

Table 2 summarizes the estimated costs. Estimated first year training costs range from roughly $210 million to $260 million depending on the share of employees trained and the duration of the training sessions. First-year costs are so much greater than the costs in subsequent years for two reasons: All employees who receive training are given the longer initial training in the first year, but take shorter refresher training in the following years, and compliance staff must design the training in the first year.[121] We allow for employee turnover by assuming that new hires in positions requiring training would be given the full initial training in their first years, and refresher trainings in each subsequent year. We also assume that turnover rates are equivalent for positions requiring and not requiring training.

The present discounted values of our low- and high-cost scenarios over the 10-year period range from roughly $265 million to $440 million and from roughly $275 million to $475 million using the seven-percent and three-percent discount rates, respectively.[122] [123]

TABLE 2—ESTIMATED TRAINING COSTS

[Millions of USD, present value]

Year	7% discount rate		3% discount rate	
	Low estimate	High estimate	Low estimate	High estimate
1	$211.1	$256.0	$211.1	$256.0
2	7.0	24.4	7.3	25.3
3	6.7	23.3	7.2	25.1
4	6.4	22.2	7.2	24.9
5	6.1	21.2	7.1	24.7
6	5.9	20.2	7.0	24.5
7	5.5	19.3	7.0	24.3
8	5.3	18.4	6.9	24.1
9	5.1	17.6	6.9	23.8
10	4.8	16.8	6.8	23.6
Present Value	$263.8	$439.4	$274.4	$476.3

Source: Treasury Department calculations.

Notes: Year 1 is 2016. Includes annual real wage growth rate based on aggregate intermediate rate in 2015 Social Security Annual Trustees Report. Mean industry wage rates are based on BLS Occupational Employment Statistics, May 2014 for NAIC–4 codes 5221, 5222, 5223, and 5231. Job turnover rates are a 5-year average from BLS total separations rates for the Finance and Insurance sector from Job Openings and Labor Turnover Survey, March 2015. Employment growth projections come from BLS Economic News Release, December 2013. Low estimate assumes one-third of employees are trained with a 30-minute initial training and 10-minute annual refreshers. High estimate assumes that two-thirds of employees are trained with a 1-hour initial training and 15-minute annual refreshers.

ii. Incremental Onboarding

Financial institutions would primarily satisfy the final CDD rule's requirement to collect beneficial ownership and control information during the legal entity account opening process. We estimate the incremental onboarding costs to institutions of the CDD rule by multiplying the expected annual number of new legal entity accounts by the value of the expected additional onboarding time due to the final rule.[124] We use an estimate of 8 million new accounts per year, which takes into account all financial accounts that will be excluded or exempted from the rule. We consider a range of 20 to 40 minutes of additional time on average to open an account under the CDD rule, based on a series of telephone calls with covered institutions, and on public comments received in response to both the NPRM and the preliminary version of the RIA published in December 2015.[125] We base a financial institution's cost of the additional time spent onboarding a single account on $16.77, the average wage for "new account clerks" in the financial industry according to data furnished by the BLS. For a seven-percent discount rate, the present value of onboarding costs has an approximate range of $350 million to $705 million; for a three-percent discount rate, the present value of onboarding costs is roughly $410 million to $825 million.

Table 3 shows the estimated onboarding costs associated with the final rule for the 10-year period of analysis.

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[120] BLS. 2015. *Job Openings and Labor Turnover Survey News Release. http://www.bls.gov/news.release/archives/jolts_03102015.htm#jolts_table9.f.2*

We use the average of the 2010–14 total annual separations rates for the Finance and Insurance industry, provided in Table 16.

[121] Using information provided in a comment by a major trade association, we adopted 200 hours as the necessary amount of time to design training per financial institution. Furthermore, we use wage data from the May 2014 BLS Occupational Employment Statistics for "compliance officers" working in business establishments in sectors having one of the four-digit North American Industry Classification System (NAICS) codes mentioned in footnote 116; the average hourly wage for these compliance officers is $34.03. The total cost of designing trainings is the product of this wage, 200 (hours), and the number of financial institutions.

[122] For completeness, as per guidance from OMB, we estimate the 10-year present discounted values using both 7-percent and 3-percent discount rates. The latter is generally appropriate for discounting future consumption flows when a regulation primarily affects private consumption, while the former is more applicable for regulations affecting private-sector financial institutions. (*See* Office of Management and Budget (OMB), *Regulatory Impact Analysis: A Primer,* Aug. 15, 2011)

[123] One of the financial institutions we interviewed was a large bank whose representatives stated that all of its employees would require training for one-half hour. In the above analysis, if all employees at all covered institutions required one hour of initial training and subsequent annual refresher training of 15 minutes, then the present value of 10-year training costs would be $561 million. Although we think it is unlikely that labor force training would need to be this widespread, this estimate provides an upper bound for total training costs.

[124] We expect that the tasks included in this additional onboarding time would include collection and verification of beneficial ownership information, as well as associated recordkeeping.

[125] In the preliminary RIA, we used 15 and 30 minutes for the low and high scenario average increases, respectively, in onboarding time per account, but some commenters objected to these values as being too low.

TABLE 3—ESTIMATED ONBOARDING COSTS FOR FINANCIAL INSTITUTIONS

[Millions of USD, present value]

Year	7% discount rate		3% discount rate	
	Low estimate	High estimate	Low estimate	High estimate
	20 Minutes additional time	40 Minutes additional time	20 Minutes additional time	40 Minutes additional time
1	$44.7	$89.4	$44.7	$89.4
2	42.3	84.6	43.9	87.9
3	40.0	80.0	43.2	86.3
4	37.8	75.7	42.4	84.8
5	35.8	71.6	41.7	83.3
6	33.8	67.7	40.9	81.9
7	32.0	64.0	40.2	80.5
8	30.3	60.5	39.5	79.1
9	28.6	57.3	38.8	77.7
10	27.1	54.2	38.2	76.3
Present Value	$352.5	$705.0	$413.6	$827.2

Source: Treasury Department calculations.

Notes: Year 1 is 2016. Includes annual real wage growth rate based on aggregate intermediate rate in 2015 Social Security Annual Trustees Report. Mean wage rates is based on BLS Occupational Employment Statistics, May 2014 for New Account Clerks. Based on expectation of 8 million legal entity accounts opened each year.

iii. Revising Policies and Procedures

In order to ensure adherence to the final CDD rule, compliance officers will have to revise their financial institution's AML program procedures—for example, account onboarding—that will be affected by the final rule. In comments submitted regarding the RIA, a major trade association estimated that this process would require an additional 56 hours of work per financial institution. Multiplying this additional hours figure by the average wage of compliance officers working in the relevant industries ($34.03; see footnote 122) by the number of covered institutions yields a total cost of $55 million for updating compliance procedures, which is only incurred in the first year.

b. Additional Client Time in New Account Opening Process

Covered institution clients would also incur costs due to the additional onboarding time resulting from the final rule (for covered institutions, we gave consideration to this cost above). Based on a series of telephone conversations with covered institutions and public comments we received in response to the NPRM and the preliminary version of the RIA published in December 2015, we estimate client costs. Our estimates assume the incremental time requirements for clients opening new legal entity accounts equal the incremental onboarding time for institutions and are products of the average additional time required to open an account, an estimate of the number of new accounts that would be opened, and an estimate of the value of client time. Also, for the sake of consistency with the computations for additional onboarding costs for financial institutions, we necessarily assume that 8 million new legal entity accounts are opened each year in calculating client costs. We use $22.71 per hour, the weighted average hourly wage for all employees from the May 2014 National Occupational Employment and Wage Estimates report. Using a seven-percent discount rate, the present value of the total additional cost to covered institution clients opening a new account range from $475 million to $955 million; the analogous figures for a three-percent discount rate are $560 million and $1.2 billion.

TABLE 4—ESTIMATED CLIENT COSTS

[Millions of USD, present value]

Year	7% discount rate		3% discount rate	
	Low estimate	High estimate	Low estimate	High estimate
	20 Minutes additional time	40 Minutes additional time	20 Minutes additional time	40 Minutes additional time
1	$60.6	$121.1	$60.6	$121.1
2	57.3	114.6	59.5	119.0
3	54.2	108.3	58.5	116.9
4	51.2	102.5	57.4	114.9
5	48.5	96.9	56.4	112.9
6	45.8	91.7	55.5	110.9
7	43.3	86.7	54.5	109.0
8	41.0	82.0	53.5	107.1
9	38.8	77.6	52.6	105.2
10	36.7	73.3	51.7	103.3
Present Value	$477.3	$954.7	$560.1	$1,120.3

Source: Treasury Department calculations.

Notes: Year 1 is 2016. Includes annual real value of time growth rate based on aggregate intermediate real wage growth rate in 2015 Social Security Annual Trustees Report. Real value of time rate is based on U.S. BLS Occupational Employment Statistics (2014) weighted average hourly wage rate for all occupations. Based on expectation of 8 million legal entity accounts opened each year.

4. Qualitative Discussion of Costs

a. Incremental Costs to U.S. Criminal Investigations and the Justice System

The U.S. Department of the Treasury believes the final rule may increase costs for Federal financial intelligence and criminal justice agencies because of the additional resources needed to handle the potentially increased volume of Suspicious Activity Reports (SARs), investigations, prosecutions, and incarcerations triggered by the final rule when adopted. These activities are part of the process of bringing financial criminals, money launderers, terrorist financiers, and other national security threats to justice, which confers benefits in the forms of reduced crime and terrorist financing. We do not attempt to quantify the scale of changes in these law enforcement activities (and their associated costs) attributable to implementation of the final rule, but we describe them briefly in the following sections. As noted below, even predicting the directions of the changes in law enforcement activity due to the final rule can be difficult, so any attempt at estimating magnitudes would be speculative.

i. Suspicious Activity Report Processing

We expect that with adoption of the final rule, SARs filed by covered financial institutions will be increasingly likely to include beneficial ownership information for legal entity accounts as, over time, the share of accounts on which beneficial ownership information would be gathered at opening rises. This information would speed the identification of complicit individuals by law enforcement agencies. The potential effects on the number of SARs filed, and the resulting Federal resources used for analysis, however, are ambiguous. Of the SARs currently filed, a significant number involve transactions that financial institutions deem suspicious because they are executed by or involve potential shell companies. Any increase in the number of SARs filed under the final rule would likely be offset by the capacity of newly collected beneficial ownership data to remove some flagged transactions from suspicion. The new information would result in some SARs not being filed that formerly would have been. The number of initial SAR filings grew from 2010 to 2014, as shown in Table 6. Due to the uncertainties associated with attributing future changes in SAR filings to the final CDD rule, we do not estimate the magnitude of this potential effect.

TABLE 6—INITITAL SUSPICIOUS ACTIVITY REPORTS (SARs) FILED IN THE UNITED STATES BY COVERED INSTITUTIONS

[Sums of all reported types of intial SARs]

2010	2011	2012	2013	2014	5 Year average
690,603	798,780	842,947	1,000,074	909,371	848,355

Source: FinCEN's System of Record.
Note: Statistics are based on counts of SARs identified as initial filings with filing received dates in the indicated year, as of 10/8/2015.

ii. Investigations

The collection of beneficial ownership information on legal entities by covered institutions may lead to more Federal investigations of financial crime and greater expense on such investigations. Improved access to beneficial ownership information would facilitate the process of "following the money trail" of affiliated entities and individuals associated with legal entity accountholders, and may lead to the discovery of previously unknown linkages to criminal activity. However, accessible beneficial ownership information would also enable law enforcement agencies to better target their efforts, which could more than offset the higher resource requirements by increasing the rate at which investigations result in prosecutions.

iii. Prosecutions

The final rule may similarly facilitate the identification and prosecution of the beneficial owners of a legal entity involved in illicit activity, as well as other key individuals associated with the legal entity, possibly resulting in more instances where charges are formally filed (compared to the number of cases brought if the final rule were not adopted). Growth in prosecution activity would increase the hours of Federal staff and contractors engaged in this activity. The availability of beneficial ownership information, had the final rule been in place, could have assisted in prosecution of several categories of crime; Table 7 shows the number of prosecutions in each of those categories for the last five years. Due to the uncertainties associated with attributing future changes in prosecutions to the final CDD rule, we do not estimate the magnitude of this potential effect, but even a hypothetical 1 percent increase on the five-year average of about 46,000 would raise the number of prosecutions by 460.

TABLE 7—FEDERAL PROSECUTIONS BY PROGRAM CATEGORY

Program category	2010	2011	2012	2013	2014	5 Year average
Drug Dealing and Possession	26,805	28,422	26,858	25,884	21,577	25,909
Government Regulatory	2,974	2,815	2,455	2,728	2,501	2,693
National Internal Security/Terrorism	365	319	267	269	212	286
Official Corruption	727	585	633	636	524	621
Organized Crime	572	582	363	390	316	445
Weapons	7,614	7,465	7,774	7,136	6,632	7,324
White Collar Crime	9,722	10,162	8,433	8,373	7,864	8,911

TABLE 7—FEDERAL PROSECUTIONS BY PROGRAM CATEGORY—Continued

Program category	2010	2011	2012	2013	2014	5 Year average
Total	48,779	50,350	46,773	45,416	39,626	46,189

Source: TRACFed database.

iv. Incarcerations

If the number of successful prosecutions increased due to the final rule, we expect that incarceration costs would rise. Increased incarcerations may incur greater variable costs (such as food, clothing, and dwellings), and personnel costs at Federal penitentiaries (guards and other staff, and their workspaces, training, and equipment). In principle, if incremental incarcerations attributable to the final rule are substantial enough that one or more new Federal institutions must be built and put into operation, then costs would likely rise further.[126] Table 8 shows the number of prison sentences during 2010–14 for categories of crime where the availability of beneficial ownership information could have aided in prosecution. Due to the uncertainties associated with attributing future changes in incarcerations to the final CDD rule, we do not estimate the magnitude of this potential effect, but even a hypothetical 1 percent increase on the five-year average of roughly 36,000 would raise the number of incarcerations by 360.

TABLE 8—SENTENCED TO PRISON TERM FOR FEDERAL CRIME

Program category	2010	2011	2012	2013	2014	5 Year average
Drug Dealing and Possession	21,426	21,686	23,449	21,663	20,990	21,843
Government Regulatory	1,000	1,053	1,065	929	856	981
National Internal Security/Terrorism	198	186	154	177	176	178
Official Corruption	357	343	358	339	373	354
Organized Crime	340	367	363	252	248	314
Weapons	6,594	6,428	6,553	6,311	5,981	6,373
White Collar Crime	6,211	6,381	5,844	5,444	5,537	5,883
Total	36,126	36,444	37,786	35,115	34,161	35,926

Source: TRACFed database.

b. Costs to Covered Institutions

i. Information Technology Upgrades

The final CDD rule will require financial institutions to collect, house, and retrieve beneficial ownership data for new accountholders, meaning that the rule would impact financial institutions' IT systems. Financial institutions either build their IT networks themselves "in-house" or procure these systems from third-party vendors, with which they sign multiyear service contracts for achieving and maintaining regulatory compliance. A single vendor likely sells multiple core platforms, tailored to different types of financial institutions (*e.g.,* credit unions instead of banks), to possibly hundreds of financial institution clients. The vendor will then customize the purchased IT platform for the individual financial institution.

If a vendor selling the same platform (with individual customizations) to multiple clients can make all of these IT systems conform to the final rule by just upgrading the core platform's software once, then there are economies of scale in producing CDD-compliant IT systems. In other words, as the vendor sells the compliant platform to another client, the average cost of achieving compliance falls for all clients purchasing that platform. This is in contrast to a situation where the vendor incurs the same additional cost of upgrading each client's IT system in response to the final rule. In the presence of economies of scale, the costs incurred in terms of number of hours of programmer labor to conform to the final rule would be lower the smaller the number of core platforms used by covered financial institutions, all else equal. We can think of financial institutions that build and maintain their networks in-house as vendors having a single client.

Under standard service contracts with financial institutions, third-party vendors monitor rules and then implement changes to their IT systems so that they maintain regulatory compliance on behalf of the financial institution. During the term of a contract, the vendor normally bears the cost of the necessary changes to maintain compliance. In discussions with the Treasury Department, however, some vendors stated that the CDD rule would be too costly to implement under the terms of these service contracts and would likely result in additional charges to their clients. The magnitude of the increase in IT costs from having to comply with the final rule would also depend in part on how financial institutions are required to use the collected beneficial ownership data. For example, merely electronically storing the information to be turned over to the government upon request would be less costly than requiring that financial institutions integrate that information with data from other databases.

Even if we could accurately predict vendors' additional charges to financial institution clients in response to the CDD rule's implementation, these values would not necessarily represent the full IT-related costs to society of imposing the CDD rule. In addition to the increased costs in terms of programmers' hours, vendors also claimed that they would have to delay the development work for other new initiatives (*e.g.*, developing further functionality of existing platforms). In principle, the full IT-related costs of the CDD rule would equal the value of the hours of labor that vendors and financial institutions performing IT service in-house would have to hire in order to both comply with the rule and not delay any of their other development initiatives.

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[126] It would be unlikely that prison overpopulation would be attributable to the proposed rule alone, but we mention this point for completeness. Currently, the Federal Bureau of Prisons operates or manages 141 institutions in the United States and the inmate population totals approximately 194,000. By type of offense, those potentially affected by the proposed rule may include (percent of total Federal inmates in parentheses): Banking and insurance, counterfeiting, and embezzlement (0.3 percent); drug offenses (48.4 percent); extortion, fraud, and bribery (6.3 percent); and national security (0.0 percent). (According to the data, 76 people are incarcerated for national security offenses.) Federal Bureau of Prisons, *Inmate Statistics—Offenses, available at http://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp* (accessed October 15, 2015).

During the comment period following the release of the NPRM, financial institutions stated that the IT costs for upgrading existing systems to comply with the final CDD rule would be large, although they generally did not cite specific amounts. We were able, however, to obtain incremental IT cost estimates specific to a few financial institutions during one-on-one calls. Specifically, one large bank, one mid-sized bank, and one smaller credit union reported expected IT upgrade costs of $20 million, $3 million to $5 million, and $50,000 to $70,000, respectively. Two larger credit unions reported estimated costs of $23,270 and $11,500. Applying these per-firm data points to the estimated number of affected banks and non-bank financial institutions to assess an order-of-magnitude IT cost, Treasury believes that the actual aggregate IT cost which will likely occur in the first year of the implementation of the rule may be in low to mid billion dollars.

The order-of-magnitude assessment of the IT cost should be understood carefully due to the information deficiencies. FinCEN only obtained five self-reported IT upgrade costs estimates with broad ranges. Some of the cost estimates provided seem to be contradictory since we expect larger firms to incur larger costs. Because of the small self-selected sample, coupled with unknown data quality associated with the per-firm cost information, we cannot reasonably extrapolate these per-firm estimates to the industry as a robust estimate of cost. We only present these findings to provide the order-of-magnitude information and to support the case for a breakeven analysis.

Total assets bin	Number of banks or institutions	Per-firm average IT upgrade costs (based on data received)	Total IT upgrade costs for bin ($ Million except Total)
>$200 billion	11	$20,000,000	$220
$10 billion–$200 billion	74	3,000,000–5,000,000	222–370
$1 billion–$10 billion	473	11,500–23,270	5–11
<1 billion	4,762	50,000–70,000	238–333
Non-bank Institutions (including credit unions)	23,496	129,000–176,000	3,030–4,140
Total	28,816		$ Billions

ii. Suspicious Activity Report Generation and Transmittal

When a financial institution detects suspected money laundering or fraud, its employees must investigate further to determine whether the activities warrant filing a SAR with FinCEN. In many instances, financial institutions decide that upon closer inspection the actions that were initially seen as suspicious do not necessitate filing a SAR. The presence of these false positives implies that the ultimate number of SARs filed by a financial institution does not directly correspond to the labor resources expended on the filing of SARs. In phone conversations with the Treasury Department, some financial institutions stated they thought they would detect more suspicious activity under the final rule, but that this increased detection would not necessarily lead to more SARs being transmitted. Given the difficulty of determining how the final rule will affect financial institutions' labor needs with regard to SAR generation and transmittal, we do not attempt to quantify this cost.

iii. Internal Control/Compliance

The CDD rule would require additional work for financial institutions' compliance officers, who ensure that procedures at their organizations adhere to the rule. According to phone conversations between financial institutions and the Treasury Department, the process of ensuring compliance with the CDD rule would take the form of additional procedures and reviews in audits of work performed. One financial institution stated that the addition of more audit functions might eventually necessitate hiring additional compliance staff. Given the uncertainty regarding how financial institutions would adjust compliance officer staffing in response to the final CDD rule, we do not quantify this cost.

iv. Potential Capital Loss (Accounts Moving Abroad) and Forgone Capital (Accounts Not Opened)

While a prospective study of the European Union's beneficial ownership disclosure rule[127] posited that its implementation in 2007 could drive some account holders to relocate their assets to foreign jurisdictions where the policies do not apply,[128] that seems unlikely to occur if the United States implements the CDD rule. The CDD rule also appears unlikely to trigger a diversion of legal entity accounts that would have been opened at domestic *covered* institutions, to be opened instead at *uncovered* domestic or foreign financial institutions.

The Treasury Department supports the perspective that beneficial ownership disclosure is unlikely to trigger legitimate transaction account holder closings or to dissuade legitimate would-be transaction account holders from opening new accounts. This view has a three-part rationale:

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[127] The rule is Directive 2005/60/EC of the European Parliament and of the Council of October 26, 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. It required member states to comply by December 15, 2007.

[128] Estimated capital loss is derived based on survey responses. One-third of National Bankers' Associations respondents agreed that the beneficial disclosure rule could lead to an increase in capital outflow from the national banking sector (p. 215). Transcrime. 2007. *Cost Benefit Analysis of Transparency Requirements in the Company/Corporate Field and Banking Sector Relevant for the Fight Against Money Laundering and Other Financial Crime.* A study financed by the European Commission.

(1) First, most businesses operating in the United States would have difficulty conducting basic functions (*e.g.*, accepting receivables and paying invoices) without a transaction account at a domestic bank.[129]

(2) Second, Financial Action Task Force (FATF) recommendations call for all member countries to require domestic financial institutions to conduct customer due diligence, and for their law enforcement agencies to cooperate with other member country enforcement agencies, which includes U.S. law enforcement. Unlike the situation at the time of the 2007 EU study referred to above, the majority of FATF members (as well as many other jurisdictions) are now in compliance with the FATF customer due diligence standards; as a result of which there are few safe havens in the world (not just advanced economies) where financial institutions are not required to obtain beneficial ownership information about legal entities when they open an account.

(3) Third, the Financial Account Tax Compliance Act (FATCA) requires foreign financial institutions to report to the IRS identifying and income information on accounts held by U.S. taxpayers.[130] FATCA's requirements apply to all financial institutions worldwide; the United States has negotiated intergovernmental agreements with 112 jurisdictions to implement FATCA, and financial institutions in jurisdictions without intergovernmental agreements are still subject to FATCA's reporting requirements. Because legal entities opening an account in any of these 112 foreign jurisdictions would be required to disclose U.S. beneficial ownership information, opening a bank account outside the United States would offer no material advantage, in terms of concealing of beneficial ownership information, versus opening an account in the United States.

c. Increased Costs Associated With Non-Criminal Activities[131]

i. Reduced Privacy

We expect financial institution clients would experience minimal costs with regard to the loss of privacy. Some costs arise because the disclosure of beneficial ownership information may require the legal entity to reveal previously undisclosed information, which is not required in any State at the time of the legal entity's formation. As such, it is likely that many entities would report some previously undisclosed beneficial ownership information.

While findings of academic research may not strictly apply in the context of this rule because disclosure would be legally required, that research suggests that when individuals self-disclose personal information, they do so after weighing the expected benefits and any negative consequences.[132] Individuals tend to readily disclose biographical information in exchange for small (and often non-financial) benefits.[133] The willingness of individuals to share information with organizations increases if they trust the organization's ability to store and use that information responsibly.[134] Because the quantity of beneficial ownership information is small and its dissemination would be limited to the financial institution (or law enforcement pursuant to legal process), we expect the cost to law-abiding individuals of disclosing private information to be quite low.

By contrast, we expect financial criminals would bear much higher costs of revealing previously private beneficial ownership information, as the consequences of disclosure could include denial of services by the financial institutions, asset forfeiture, or prosecution and incarceration. Since the expressed intent of the final rule is to increase the costs of criminal activity, this variation in the cost of privacy loss is consistent with the intended effect of the final rule. We do not attempt to estimate the value of privacy loss.

ii. Potential Impact on Clients, Including Access to Banking for the Unbanked

The "unbanked" population in the United States stood at 7.7 percent of all households in 2013, according to a Federal Deposit Insurance Corporation (FDIC) survey.[135] Unbanked households do not have an account at an insured financial institution. We see value in developing a financial system whereby ". . . banks effectively serve the broadest possible set of consumers."

If compliance costs faced by financial institutions are passed through to their clients (for example, through increased minimum deposit levels and/or higher fees), this theoretically could raise clients' barriers to entry, and may price some consumers out of participating in the banking system.[136] However, we find no literature estimating the potential impact of AML/CFT on the unbanked population in the United States, and we do not attempt to quantify its magnitude. Nonetheless, we reason that since the costs incurred by financial institutions from the final rule appear to be relatively modest, and the passed-through costs would be spread across a broad client base, we expect the marginal effect on unbanked groups would likely be small.

5. Qualitative Discussion of the Benefits

a. Reduced Crimes and Terrorist Activity

The primary purpose of this final rule is to reduce illicit activity. Yet credible quantitative estimates of how the CDD rule would affect these outcomes, on which the benefit calculation in the cost-benefit analysis would be based, do not exist, for the reasons discussed above. Therefore, this analysis provides a qualitative assessment of potential reductions in illicit activity based on relevant literature.

The *National Money Laundering Risk Assessment 2015* estimated the annual volume of money laundering in the United States at $300 billion. The same source notes that one of the key vulnerabilities exploited by money launderers is "creating legal entities without accurate information about the identity of the beneficial owner." [137] The report suggests that the ease of concealment plays a primary role in the execution of many financial crimes.[138] Therefore, the beneficial ownership disclosure requirement in this final rule would likely have a mitigating effect on a large share of financial crime in the United States.

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[129] Some commenters stated that with regard to certain specialized credit products, the beneficial ownership requirement would be likely to cause businesses to utilize uncovered competitors. Because FinCEN views such products as low risk for money laundering or terrorist financing, they have been exempted from the beneficial ownership requirement, subject to the satisfaction of certain conditions.

[130] Or certain foreign entities in which U.S. taxpayers are considered either "substantial U.S. owners," defined as having a 10 percent or greater ownership stake in the entity, or, for financial institutions in jurisdictions with an intergovernmental agreement, "controlling persons," defined in accordance with the FATF recommendations as the natural persons who exercise control over the entity.

[131] These costs would be over and above any incremental compliance costs of the CDD rule passed on to clients by financial institutions.

[132] Varian, Hal. "Economic Aspects of Personal Privacy," In *Internet Policy and Economics*, edited by W.H. Lehr and L.M. Pupillo, 101–109. New York: Springer, 2009. See also: Hann, Il-Horn; Kai-Lung Hui, Tom Lee, and I Png. "Online Information Privacy: Measuring the Cost-Benefit Trade-Off." *ICIS 2002 Proceedings*, Paper 1 (2002).

[133] Grossklags, Jens, and Alessandro Acquisti. "What Can Behavioral Economics Teach Us about Privacy?" In *Digital Privacy: Theory, Technologies, and Practices*, edited by Acquisti, Alessandro, Stefanos Gritzalis, Costas Lambrinoudakis, and Sabrina De Capitani di Vimercati, 363–377. Boca Raton: Auerbach Publications, 2008.

[134] Dinev, Tamara and Paul Hart. "An Extended Privacy Calculus Model for E-Commerce Transactions." *Information Systems Research* 17, no. 1 (2006): 61–80. This study pre-dates the major IT data breaches at large firms and government institutions that have occurred in recent years.

[135] Federal Deposit Insurance Corporation. 2014. *2013 FDIC National Survey of Unbanked and Underbanked Households.*

[136] Reuter, Peter, and Edwin Truman. *Chasing Dirty Money: Progress on Anti-Money Laundering.* Washington: Peterson Institute, 2004.

In the absence of direct empirical estimates on the link between AML/CFT policy and illicit activity, we refer to the literature on the economics of crime. This body of work, pioneered by Nobel laureate Gary Becker, assumes criminals make rational decisions based on their expected costs and benefits of committing crime.[139] In Becker's approach, an individual's decision to commit a criminal offense is a function of the income associated with getting away with the crime, the probability of conviction, the punishment if convicted, and earnings from legitimate work. A rational individual chooses to commit a crime when it yields higher expected wellbeing (accounting for risk of conviction and the associated punishment) than does time spent in legitimate employment.

Applying Becker's model to criminals allows us to evaluate how the new policy would affect the level of illicit activity. By revealing more criminals' identities and therefore facilitating the linkage of criminal acts to perpetrators by financial intelligence and law enforcement, the CDD rule would increase the probability of conviction. Therefore, in the context of Becker's model, we expect that the CDD rule would reduce the level of illicit activity. Subsequent incarceration would render these criminals unable to engage in illicit activity while serving their sentences, a phenomenon known as the "incapacitation effect." Higher rates of apprehension and conviction may also deter potential criminals from committing crime. The large empirical literature on the economics of crime shows convincing evidence that higher probabilities of apprehension and conviction (usually in the form of stronger police presence) tend to reduce crime rates through some combination of incapacitation and deterrence.[140]

In principle, criminals could respond by attempting to move their accounts to those countries that still have not adopted beneficial ownership identification and verification, although we consider this to be unlikely, because most of the world's countries already require financial institutions to collect and verify beneficial ownership of legal entity account holders. Criminals could theoretically also reduce their beneficial ownership shares below the disclosure threshold; we also view this response as unlikely, because of the practical difficulties criminals would face laundering money through a vehicle in which they hold only a minority stake. Those criminals may incur the costs of taking those steps, and perhaps ongoing costs in the form of using less convenient and costlier financial services. Combined, these higher costs would reduce the expected returns to crime, which we anticipate would therefore lower financial crime rates.

In order to compute the benefit of reduced crime from the CDD rule, we would need to know both the causal negative effect of the CDD rule on the level of illicit activity (discussed above) *and* the costs imposed on society by the illicit activity that would not occur in the presence of the rule. Enumerating these costs is not as straightforward as it might appear, so we follow the cost-of-crime literature in distinguishing between "social costs" and "external costs" of crime in order to be more precise regarding the potential benefits of the final rule.[141] External costs are those that are involuntarily imposed on one individual (the victim) by another individual (the offender). In the case of an automobile theft, for example, the external costs could include the resale value of the vehicle, the value of items in the vehicle at the time of theft, the value of the victim's time spent dealing with the aftermath of the crime, and any psychological pain and suffering experienced by the victim. Yet whether the perpetrator keeps or sells the vehicle and the items therein, these are still available for use by someone in society and can be thought of as transfers from one individual to another. Therefore one could reason that, unlike the victim's pain and suffering and lost time—losses which are not offset by gains to someone else—the value of stolen goods (or money) does not represent a social cost.[142] This view is equivalent to the inclusion of perpetrators' wellbeing in overall social welfare, for example, when evaluating a crime-reducing policy. As a recent survey points out, however, "[i]n practice, researchers have generally adopted the perspective that an offender's utility ought not to count as part of society's social welfare function." [143] We too adopt this approach in the RIA, using external costs as the relevant concept for the cost of crime, meaning that any reduction in funds *involuntarily* transferred from victim to offender would constitute a benefit of the CDD rule.

A complete accounting of the value of reduced crime and terrorist financing would include the full value of harm to victims averted by the reduction in these activities. In addition to tangible costs such as financial losses (which, given the adoption of external costs in our approach, would not be balanced by gains to criminals), research on the costs of crime finds intangible losses, including pain, suffering, and reduced quality of life, associated with criminal activity. Button et al. (2014) interviewed over 700 victims of financial fraud in London. Among the effects reported by victims as important were "depression or a mental disorder" (7 percent), "psychological/emotional feelings, loss of trust, and so on" (37 percent), stress (44 percent), and anger (68 percent).[144] A national study of financial fraud in the United States by the National Institute of Justice found that 14 percent of fraud victims reported suffering health or emotional problems related directly to their victimization.[145] However, we find no empirical estimates of the psychological costs of crime. Many studies of the costs of crime do not fully consider the psychological impact on its victims,[146] and therefore, the true economic value of averted crime may exceed estimates derived from published studies of the costs of crime.

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[137] U.S. Department of the Treasury. Office of Terrorism and Financial Intelligence. 2015. *National Money Laundering Risk Assessment.*

[138] U.S. Department of the Treasury concludes that, "The potential for anonymity in financial transactions underlies most of the vulnerabilities in this risk assessment." See U.S. Department of the Treasury. Office of Terrorism and Financial Intelligence. 2015. *National Money Laundering Risk Assessment.*

[139] See Becker, Gary, "Crime and Punishment: an Economic Analysis." *Journal of Political Economy* 78 (1968). 169–217.

[140] See, for example, Chalfin, Aaron and Justin McCrary, "Criminal Deterrence: A Review of the Literature," Paper prepared for the Journal of Economic Literature (2015). See also Nagin, Daniel, "Deterrence: A Review of the Evidence by a Criminologist for Economists." *Annual Review of Economics* 5 (2013): 83–105.

[141] The descriptions and examples of social and external costs in this section closely follow the discussions in Chalfin, Aaron. "The Economic Cost of Crime." Working paper, University of Cincinnati (2013). and Cohen, Mark A. "Measuring the Costs and Benefits of Crime and Justice." *Criminal Justice* 4 (2000): 263–315.

[142] Note that the social costs of crime are not a subset of the external costs. Social costs of crime can also include any resources devoted to crime prevention by the public sector or private citizens that could be more productively put to other uses and diminished economic opportunity in high crime areas where businesses choose not to locate.

[143] See page 5 of Chalfin, Aaron. "The Economic Cost of Crime." Working paper, University of Cincinnati (2013). and articles cited within for additional perspectives.

[144] Button, Mark, Chris Lewis, and Jacki Tapley. "Not a Victimless Crime: the Impact of Fraud on Individual Victims and their Families." *Security Journal* 27, no. 1 (2014): 36–54.

[145] Titus, Richard, Fred Heinzelmann, and John Boyle. "The Anatomy of Fraud: Report of a Nationwide Survey." *National Institute of Justice Journal* (1995): 28–34.

b. Law Enforcement Benefits

i. Reduced Cost of Beneficial Ownership Searches

A direct benefit of the final rule would be the reduction in the cost to law enforcement agencies of obtaining beneficial ownership information. The current system generally requires Federal investigators to expend resources in search of beneficial ownership information when conditions warrant it. Adoption of the final rule would reduce law enforcement agencies' search costs because the information would be collected by covered financial institutions for new legal entity accounts and become more readily accessible to law enforcement agency investigators with a subpoena. In addition, SARs filed by the institutions would be increasingly likely to include beneficial ownership information, making it readily available to Federal authorities. We do not attempt to estimate the value of this potential benefit, but we expect it to grow over time, as the share of accounts whose beneficial ownership is disclosed gradually rises.[147]

6. Transfers

In the next two sections, we identify a few potential effects that do not conform to strictly-defined costs or benefits to society, but may have impacts on selected stakeholders. These effects are not included as costs or benefits.

a. Lost Tax Revenue Due to Capital Loss (Accounts Moving Abroad)

To the extent that financial accounts at covered institutions generate taxable income and that the decision to open these accounts is sensitive to the collection of beneficial ownership information, the final CDD rule has the potential to eliminate tax revenue that would otherwise be collected. However, from our perspective, beneficial ownership disclosure would have a negligible effect on the number of legal entity accounts because legal entities in the United States generally require bank accounts to operate their businesses. In addition, the vast majority of the world's countries require financial institutions to collect and verify beneficial ownership of legal entity accountholders. As a result, there are few safe havens in the world that permit financial institutions to open an account for a legal entity and not obtain the entity's beneficial ownership. (See discussion in section 4.b.iv.)

b. Increased Asset Recovery

To the extent that the number of successful prosecutions increases due to the final rule, we expect that the recovery of assets by Federal authorities would rise. We would consider any increase in assets recovered due to the final rule as transfers. Table 5 shows that the value of assets forfeited to the U.S. Department of Justice Forfeiture Fund has exceeded $1.5 billion every year from 2010 to 2014 and has exceeded $4 billion in two of those years,[148] and that the value of assets forfeited to the U.S. Department of the Treasury Forfeiture Fund has been greater than $500 million in every year over the same period.[149] Due to the uncertainties associated with attributing future changes in asset recovery to the final CDD rule, we do not estimate the magnitude of this potential effect, but even a hypothetical 5 percent increase on the five-year average of $2.9 billion for the DOJ forfeitures alone would exceed $145 million in additional assets recovered.

TABLE 5—ASSETS OF DEPARTMENT OF JUSTICE FORFEITURE FUND AND SEIZED ASSETS DEPOSITS FUND AND TREASURY FORFEITURE FUND

[U.S. Department of Justice, U.S. Department of the Treasury]

[Millions of nominal USD]

2010	2011	2012	2013	2014	5 Year average
Forfeited to Department of Justice:					
$1,947	$1,617	$4,453	$2,148	$4,551	$2,943
Forfeited to Treasury:					
1,142	929	523	1,713	784	1,018

Sources: U.S. Department of Justice, Assets Forfeiture Program. Annual Reports to Congress (eds. 2004–2014). Adapted from "Assets Forfeiture Fund and Seized Assets Deposits Fund—Method of Disposition of Forfeited Property" tables. *http://www.justice.gov/afp/reports-congress*, accessed October 8, 2015. Treasury Executive Office for Asset Forfeiture.

Note: Current year revenue includes direct revenue and reverse asset sharing.

c. Potential Increased Tax Revenue Through Improved Tax Compliance

According to the U.S. Department of the Treasury, the collection of beneficial ownership information by covered financial institutions for their domestic legal entity accounts would result in new information being available to the IRS during audits and investigations into civil and criminal tax noncompliance. Ready access to account beneficial ownership information from covered financial institutions would help the IRS determine whether beneficial owners are accurately reporting income from entities. Moreover, IRS access to this information would increase incentives for voluntary tax compliance by beneficial owners of the accounts. Any increased tax revenue would be considered a transfer.

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[146] McCollister, Kathryn, Michael French, and Hai Fang. "The Cost of Crime to Society: New Crime-Specific Estimates for Policy and Program Evaluation." *Drug and Alcohol Dependence* 108 (2010): 98–109.

[147] We expect this gradual increase in the share of accounts with disclosed beneficial ownership because only new legal entity accounts would require this information under the proposed rule.

[148] Based on statistics from the DOJ Asset Forfeiture Program. The DOJ Asset Forfeiture Program Web page lists the following participating institutions. DOJ institutions: The Asset Forfeiture and Money Laundering Section of the Criminal Division; Bureau of Alcohol, Tobacco, Firearms, and Explosives; Drug Enforcement Administration; Federal Bureau of Investigation; U.S. Marshals Service; U.S. Attorneys' Offices; and Asset Forfeitures Management Staff. Institutions from other U.S. Government agencies include: U.S. Postal Inspection Service; Food and Drug Administration; U.S. Department of Agriculture, Office of the Inspector General; Department of State, Bureau of Diplomatic Security; and Defense Criminal Investigative Service. Source: U.S. Department of Justice. 2015. *Participants and Roles. http://www.justice.gov/afp/participants-and-roles* (accessed September 14, 2015).

[149] Participating agencies include IRS Criminal Investigations Division, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, U.S. Secret Service, and U.S. Coast Guard. Source: U.S. Department of the Treasury. 2015. *Terrorism and Financial Intelligence. http://www.treasury.gov/about/organizational-structure/offices/Pages/The-Executive-Office-for-Asset-Forfeiture.aspx* (accessed October 8, 2015).

7. Reputational Effects

a. Reputational Effects of Meeting International Policy Standards

FATF has set international standards to enhance the collective effort to combat money laundering and terrorist financing. Widespread adoption of such international standards can raise the cost of crime, by limiting criminals' choices of where they can obtain accounts, and eliminate "safe havens" for financial criminals seeking jurisdictions with less rigorous laws or enforcement.

Recent reviews of U.S. compliance with international AML/CFT standards have criticized the incomplete adoption of the customer due diligence framework. The 2006 FATF Mutual Evaluation Report (MER) found that the United States had implemented an AML/CFT system that was broadly consistent with the international standard. However, the report noted shortcomings related to CDD in the U.S. framework, and rated it only "partially compliant" with the CDD recommendation, a significant reason being the lack of an explicit beneficial ownership identification requirement.[150] The International Monetary Fund (IMF) in 2010 found the United States had made "limited progress" since 2006 in strengthening requirements on identifying beneficial owners of accounts.[151] In its 2015 Financial Sector Assessment of the United States, the IMF acknowledged U.S. efforts in addressing deficiencies identified in the 2006 FATF MER, but cited a lack of substantive policy progress by the end of its research mission in June 2015.[152]

The U.S. government responded to the 2006 FATF Report by committing to strengthen customer due diligence standards. In 2013, the U.S. G–8 Action Plan for Transparency of Company Ownership and Control committed to clarifying and strengthening customer due diligence standards for U.S. financial institutions.[153] In October 2015, the U.S. G–20 Action Plan notes its engagement in developing a customer due diligence rule with required beneficial ownership disclosure for financial institutions.[154]

Implementing the CDD rule would advance compliance by the United States with the FATF CDD standards and fulfill outstanding public commitments. It would further enable the United States to demonstrate progress at the FATF, and at other international bodies, and bilaterally to encourage other jurisdictions to comply with the FATF standards and avoid accusations of hypocrisy due to its own lack of compliance. We do not attempt to quantify or monetize the magnitude of this potential reputational effect, given the intangible nature of reputational effects, but assess it to be significant. The United States, which is generally considered a global leader in combating money laundering and terrorist financing, is currently one of a very small number of FATF members that are not in compliance with its core standard requiring that financial institutions identify and verify the identity of the beneficial owners of legal entity accounts. We assess that this lack of full compliance with the standard with which the vast majority of the rest of the world complies, undermines U.S. leadership on illicit finance issues.

b. Reputational Effects on Financial Institutions

We believe the proposed CDD rule is unlikely to provide appreciable reputational effects on covered financial institutions. Our reasoning is as follows. Client confidence in financial institutions is a necessary component of an effective financial system.[155] Depositors trust institutions to safeguard deposits, provide fund withdrawals upon request, and meet regulatory and prudential requirements.

In principle, financial institutions that maintain full compliance with AML/CFT regulations, including the final rule, may be viewed as less risky by clients and investors, at least when compared to non-complying institutions. However, compliance with the CDD rule would likely do little to distinguish any particular financial institution from its peers, since all covered institutions would be subject to the same requirement, and compliance is expected to be universal. Therefore, in this context, we believe any potential reputational effect to institutions that comply with the rule would be negligible.

8. Breakeven Analysis and Conclusion

Ideally, a cost-benefit analysis quantifies all benefits and costs, converts them to present value, and then assesses whether the present value of benefits exceeds the present value of costs. However, it is not uncommon for a rule to generate benefits and costs that cannot be fully quantified, in which case alternative methods can be used to assess the rule.[156] When such unquantifiable benefits and costs are likely to be important, one should carry out a "threshold," or "breakeven" analysis to evaluate their significance.[157] Such an analysis asks how large the present value of benefits has to be so that it is just equal to the present value of costs.[158] A credible claim that a rule change would generate a discounted stream of benefits equal to or greater than this breakeven level supports the argument that a rule should be adopted.[159] As we described at length above, we expect there to be significant but unquantifiable benefits to this rule, necessitating the use of a breakeven analysis. This analysis presents a range of costs, including the primary quantified costs and the order-of-magnitude IT cost assessment with an upper bound of $10 billion for the cost of implementing the rule, which thus determines the threshold that the benefits would need to meet for the rule to generate a net benefit to society.

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[150] Financial Action Task Force. 2006. *Summary of the Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, United States of America.* FATF is performing its mutual evaluation of the United States, to be completed in October 2016.

[151] International Monetary Fund. IMF Country Report No. 10/253. 2010. *United States: Publication of Financial Sector Assessment Program Documentation—Technical Note on Anti-Money Laundering/Combating the Financing of Terrorism.*

[152] International Monetary Fund. IMF Country Report No. 15/174. 2015. *United States Financial Sector Assessment Program: Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)—Technical Note.*

[153] The White House. Office of the Press Secretary. 2013. *United States G–8 Action Plan for Transparency of Company Ownership and Control. https://www.whitehouse.gov/the-press-office/2013/06/18/united-states-g-8-action-plan-transparency-company-ownership-and-control* (accessed October 8, 2015).

[154] The White House, *The U.S. Action Plan to Implement the G–20 High Level Principles on Beneficial Ownership, https://www.whitehouse.gov/blog/2015/10/16/us-action-plan-implement-g-20-high-level-principles-beneficial-ownership.*

[155] International Monetary Fund. Departments of Exchange Affairs, Policy Development, and Review. 2001. *Financial System Abuse, Financial Crime, and Money Laundering—Background Paper.*

[156] For a discussion of this situation, along with many examples of proposed Federal regulations affected by it, see Sunstein, Cass. "The Limits of Quantification." *California Law Review* 102, no. 6 (2014): 1369–1422.

[157] See pages 2 and 10 of OMB *Circular A–4.* 2003.

[158] For examples of regulatory analyses of past rules that relied on breakeven analysis, see Customs and Border Protection, Department of Homeland Security, "Importer Security Filings and Additional Carrier Requirements," 73 FR 71730 (November 25, 2008), and Customs and Border Protection, Department of Homeland Security, "Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels," 72 FR 48320 (August 23, 2007).

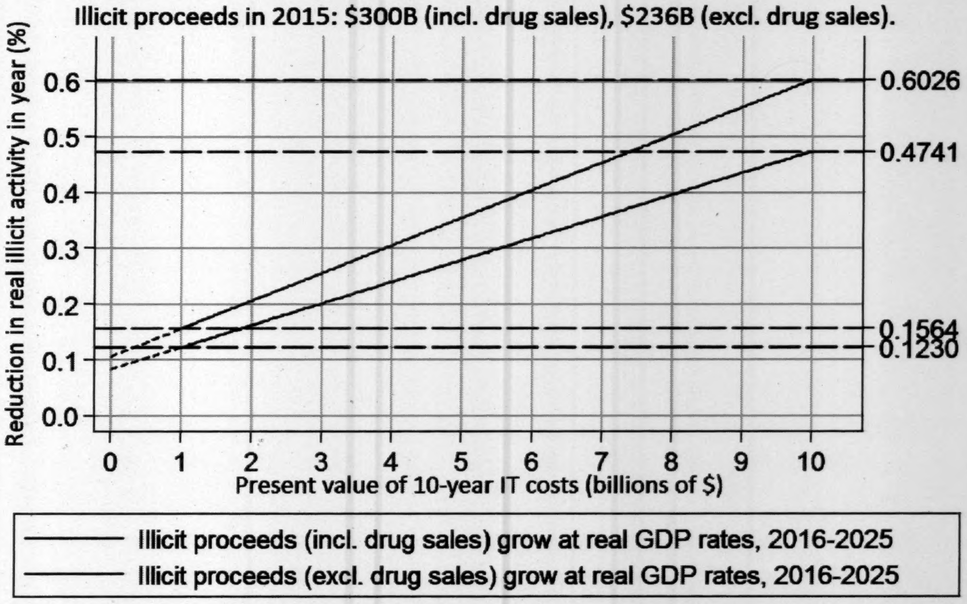
[159] In performing the breakeven analysis, we discount future cash flows using the seven-percent discount rate.

Given that the upper bound for costs used in the breakeven analysis is high, the breakeven analysis is therefore very conservative in specifying how effective the CDD rule would have to be in order to justify its costs.

As mentioned in the first section of the RIA, $300 billion in illicit proceeds are generated annually in the United States according to the Treasury Department's 2015 *National Money Laundering Risk Assessment*.[160] To the extent that this figure represents funds involuntarily transferred from victims to offenders, the $300 billion represents a portion of the total external costs imposed by the illicit activity.[161] The final CDD rule intends to diminish the volume of such illegally generated funds, where any reduction represents the "reduced crime" portion of the unquantified "reduced crime and terrorist activity" benefit described earlier. Any reduction of the $300 billion figure is a lower bound for the final rule's actual benefit, given the reliance on saved external costs as the relevant concept (*i.e.*, this does not reflect the value of individuals' lost time in the aftermath of being victimized by financial crime or their psychological suffering, among many other costs).[162] Note that this benefit is also a lower bound because it does not include the other qualitative benefits (besides reduced terrorist activity) discussed in the RIA.

In terms of costs, IT upgrades represent the largest of the qualitative costs examined in the RIA. In both public comments on the NPRM and follow-up calls with individual commenters, financial institutions emphasized that the rule would impose large IT upgrade costs. In the breakeven analysis to follow, we present both the primary quantified costs and the order-of-magnitude IT costs, setting aside all other unquantified costs because we believe these other costs are likely to be comparatively small. For example, as noted earlier, it is very unclear whether law enforcement activity (and the associated costs) would increase or decrease because of the rule.[163] Similar arguments can be made about financial institutions' costs for generating and submitting SARs. Regarding the financial institutions' capital loss from accounts closing or never being opened, the respective sections of the RIA go into some detail on why these costs would likely be negligible. Finally, earlier sections of the RIA also explain why the unquantified costs to clients may be low.

Figure 1: Breakeven reduction in real illicit activity and costs*



*Note: Dashed portions of black and blue lines show necessary reductions for IT costs below $1 billion lower bound.

In summary, in this RIA, the major benefit that remains unquantified is the reduction in crime and terrorist activity, and the costs include costs associated with training, onboarding, compliance and entity burdens, the order-of-magnitude assessment of the IT upgrades as well as other qualitative costs. By including an order-of-magnitude assessment with the other quantified costs, we can determine the threshold level of the benefit that would make the rule's adoption worthwhile. Figure 1 graphs the threshold reduction in annual illicit activity that would be needed to justify different levels of *total costs* for different definitions of illicit activity (*i.e.*, whether including illicit drug sales or not).[164] [165] Given the assumed path of illicit activity during 2016–2025, percent reductions in illicit proceeds in each year equal to those in Figure 1 would yield a stream of benefits having present values equal to the present value of costs.

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[160] See footnote 106.

[161] This is plausible for proceeds *not* due to illicit drug sales (representing approximately 22 percent of the total in the United States according to United Nations Office on Drugs and Crime estimates for 2010; we assume that this is also the case for 2015 and subsequent years), which are mostly attributable to fraud. This distinction matters because individuals who buy and sell illicit drugs presumably enter into individual transactions voluntarily. See footnote 5 for a discussion of the circumstances under which the inclusion of proceeds from illicit drug sales is justified in computing the benefits to society of reduced crime.

[162] For additional discussion of the importance of non-pecuniary costs (including, but not limited to, victims' pain and suffering, and the cost of risk of death from violent acts that complement illicit activity) in the overall cost of crime to society, see pages 3558–3560 of Freeman, Richard. "The Economics of Crime," In *Handbook of Labor Economics*, edited by Orley Ashenfelter and David Card, 3530–3563. New York: Elsevier, 1999.

[163] Note that the CDD rule could lead to lower levels of illicit activity without any increase in law enforcement activity (even without a change in incarcerations, meaning the change in illicit activity would occur exclusively via the deterrence effect) if the rule allows the same resources to be deployed more effectively in investigations and prosecutions.

The key conclusion from Figure 1 is that a reduction in annual illicit activity (measured by dollars of real proceeds) of just 0.6 percent or 0.47 percent (depending on whether proceeds from drug sales are included or not) or approximately $1.45 billion in 2016, at the upper bound of IT costs, would mean that the CDD rule's benefits would outweigh its costs.[166] We are presenting two cost scenarios in this breakeven analysis. We recognize that the order-of-magnitude IT cost analysis is not of sufficient quality to be added to the primary cost analysis. However for the purposes of this breakeven analysis, we believe including the IT cost would present a conservative scenario where the CDD rule would only need to generate a very modest relative decrease in real illicit activity to justify the costs it would impose with an upper bound of $10 billion. The Treasury Department thus believes that the final rule will achieve a reduction in illicit activity that would more than offset the burdens it would place on government, financial institutions, clients, and other parts of society.

We conclude that illicit activity would only have to decrease by 0.12% to 0.6% to offset the costs of the rule. Because of the modest magnitude of the reduction, we believe that this rule would be beneficial to society at large.

C. Final Regulatory Flexibility Act Analysis

When an agency issues a rule proposal, the Regulatory Flexibility Act (RFA) requires the agency to either provide an Initial Regulatory Flexibility Analysis or, in lieu of preparing an analysis, to certify that the proposed rule is not expected to have a significant economic impact on a substantial number of small entities.[167] When FinCEN issued its NPRM,[168] FinCEN believed that the proposed rule would not have a significant economic impact on a substantial number of small entities, and certified that it would not.[169] Because numerous commenters to the NPRM asserted that the proposed rule would be more costly to implement than estimated by FinCEN, FinCEN prepared and made available on December 24, 2015 an Initial Regulatory Flexibility Analysis (IRFA), along with a preliminary RIA in which it specifically solicited comment, including from small entities, on whether the proposed rule would have a significant economic impact on a substantial number of small entities. FinCEN received a total of 38 comments, including four from small entities (as well as several from associations representing small entities); a discussion of all the comments is set forth above.

The RFA requires each Final Regulatory Flexibility Analysis to contain:

- A succinct statement of the need for, and objectives of, the rule;
- A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- A description of and an estimate of the number of small entities to which the proposed rule would apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record; and
- A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

1. Statement of the Reasons For, and Objectives of, the Rule

FinCEN is adopting the final rule because it has determined that more explicit rules for covered financial institutions[170] are needed to clarify and strengthen CDD within the BSA regime, in order to enhance transparency and help safeguard the financial system against illicit use. The CDD rule will advance the purposes of the BSA by (i) enhancing the availability of beneficial ownership information to law enforcement, Federal functional regulators, and SROs; (ii) increasing the ability of financial institutions, law enforcement, and the intelligence community to identify the assets and accounts of terrorist organizations, drug kingpins, and financial criminals; (iii) helping financial institutions to assess and mitigate risk and comply with existing BSA and related authorities; (iv) facilitating reporting and investigations in support of tax compliance, and advancing commitments made in connection with the Foreign Account Tax Compliance Act; and (v) promoting consistency in implementing and enforcing CDD regulatory expectations across and within financial sectors.

2. A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

FinCEN has carefully considered the comment letters received in response to the NPRM. The preamble above provides a general overview of the comments, and the Section-by-Section Analysis discusses the significant issues raised by comments. In addition, the section above preceding the RIA includes a discussion of the comments received with respect to the preliminary RIA and IRFA, including those with respect to the estimated costs imposed on the industry resulting from the rule.

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[164] Quantified costs are assumed to be constant as IT costs change (meaning that a $1 increase in IT costs raises total costs by $1) so the breakeven functions are able to take into account all costs while only being graphed for different levels of IT costs.

[165] To generate the profile of illicit proceeds during the 2016–2025 time horizon, we start with the 2015 levels (listed in Figure 1) and then assume that the amount of illicit activity as a *proportion* of the real economy will remain constant (for the year-over-year real GDP growth rates used, see Table 2–1 of OMB. *Fiscal Year 2016 Analytical Perspectives of the U.S. Government.* 2015.). This means that illicit proceeds are always equal to the same percent of production in the economy, but given that the real economy is growing, illicit proceeds must grow as well to account for that same proportional amount. For instance, real illicit proceeds (including from illicit drug sales) are assumed to be $309 billion and almost $383 billion in 2016 and 2025, respectively.

[166] To be exact, these are *real* IT costs incurred during the 10-year time horizon, the present value of which implies very little about how these real costs are distributed across the 10 years.

[167] 5 U.S.C. 601–612.

[168] 79 FR 45151 (Aug. 4, 2014).

[169] 79 FR 45151, 45168–45169.

[170] Defined to include federally regulated banks, brokers and dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities.

FinCEN has considered the comments received from small entities and from associations representing them, whether or not the comments referred to the IRFA. Three of the four small entities that commented stated that the general increase in regulatory burden and costs for the banking industry makes it increasingly difficult for small banks to continue to operate profitably, and requested that FinCEN create an exemption for entities below a certain asset size or number of legal entity accounts. One of these commenters stated that while it has relatively few business accounts, it would cost thousands of dollars to purchase the tracking software that it asserted would be required to comply with the rule. The fourth small bank is a niche lender that provides primarily small business equipment leasing, and explained that because many of its competitors will not be subject to the final rule, it will put them at a significant competitive disadvantage. FinCEN has determined that, because accounts created to provide this product present a low risk for money laundering or terrorist financing, such accounts will be exempt from the beneficial ownership requirement, subject to certain conditions.

FinCEN has previously considered and rejected the alternative of exempting small financial institutions from the rule. Were FinCEN to exempt institutions below a certain size from the rule, those seeking access to the financial system to perpetrate crime would have an easier path in order to pursue such activities. As regards the institution that raised the cost of purchasing tracking software in order to comply, FinCEN never intended to impose a requirement that would necessitate such an expense. There is no requirement for covered FIs to have specific systems in place to track and monitor beneficial ownership information. Rather, financial institutions are required to update information about their customers, including beneficial ownership information, when as a result of normal monitoring, the financial institution detects information about the customer that may be relevant to assessing the risk posed by the customer. Such information could include a change in the customer's beneficial ownership. This issue, including FinCEN's revision to the proposed rule in order to clarify this in the final rule, is explained more fully in the Section-by-Section Analysis above.

More specific information regarding the estimated costs for small entities resulting from the final rule is set forth in section 4 below, and other steps FinCEN has taken to minimize the economic impact of the rule on small entities are set forth in section 5 below.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

This rule will apply to all Federally regulated banks and all brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities, as each is defined in the BSA. Based upon recent data, for the purposes of the RFA, there are approximately 5,088 small Federally regulated banks out of a total of 6,348 (comprising 80 percent of the total number of banks);[171] 6,165 Federally regulated credit unions (of which approximately 93 percent are small credit unions),[172] 1,349 small brokers or dealers in securities out of a total of 4,269 (comprising 31.5 percent of the total);[173] 90 small mutual funds out of a total of 10,711 (comprising 8 percent of the total);[174] no small futures commission merchants; and a total of 1,323 introducing brokers in commodities, the majority of which are small entities.[175] Because the rule will apply to all of these small financial institutions, FinCEN concludes that the rule will apply to a substantial number of small entities.

4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

a. Beneficial Ownership Requirement

The rule imposes on all covered financial institutions (including all those that are small entities) a new requirement to identify and to verify the identity of the beneficial owners of their legal entity customers and to maintain a record of such information. Many of the comments received in response to the NPRM stated that FinCEN had underestimated the burden resulting from the proposal in the following areas: (i) Additional time at account opening, (ii) training, and (iii) information technology (IT), but very few comments contained any specific cost estimates. To obtain more specific cost estimates regarding this requirement, FinCEN conducted telephone interviews with several financial institutions that had submitted comments, including three small financial institutions. FinCEN conducted this outreach to gather information for its preliminary RIA of the proposed rule pursuant to Executive Orders 13563 and 12866 as well for the IRFA. The final RIA is published concurrently with this FRFA. Additional information that FinCEN obtained relevant to its estimate of costs is included in the discussion below. FinCEN also notes that, in addition to the estimates set forth below, the only small bank that estimated the total costs resulting from the rule, estimated that they would be $2,000 initially, and $1,500 per year on an ongoing basis.

(i) *Additional time at account opening.* The proposed rule would require that the beneficial ownership requirement be satisfied by obtaining and maintaining a certification from each legal entity customer that opens a new account. The certification would contain identifying information regarding each listed beneficial owner. The financial institution would also be required to verify such identity by documentary or non-documentary methods and to maintain in its records for five years a description of (i) any document relied on for verification, (ii) any such non-documentary methods and results of such measures undertaken, and (iii) the resolution of any substantive discrepancies discovered in verifying the identification information. FinCEN believes that the financial institution employees who open new accounts would have the necessary skills to prepare the record of this information that must be maintained.

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[171] The Small Business Administration ("SBA") defines a depository institution (including a credit union) as a small business if it has assets of $550 million or less. The information was provided by the FDIC as of June 30, 2015.

[172] The information was provided by the NCUA as of June 30, 2015.

[173] With regard to the definition of small entity as it applies to broker-dealers in securities and mutual funds, FinCEN is using the SEC's definitions found at 17 CFR 240.0–10(c), and 17 CFR 270.0–10, respectively. The information was provided by the SEC as of December 31, 2014.

[174] The information was provided by the SEC as of December 31, 2014.

[175] The CFTC has determined that futures commission merchants are not small entities for purposes of the RFA, and, thus, the requirements of the RFA do not apply to them. The CFTC's determination was based, in part, upon the obligation of futures commission merchants to meet the minimum financial requirements established by the CFTC to enhance the protection of customers' segregated funds and protect the financial condition of futures commission merchants generally. Small introducing brokers in commodities are defined by the SBA as those having less than $7 million in gross receipts annually. While the CFTC has no current data regarding the exact number of small entities, we understand that the majority are small. The information was provided by the CFTC as of June 30, 2015.

The burden on a small financial institution at account opening resulting from the final rule would be a function of the number of beneficial owners of each legal entity customer opening a new account,[176] the additional time required for each beneficial owner, and the number of new accounts opened for legal entities by the small financial institution during a specified period. At the time of its certification in the NPRM, FinCEN had very little information on which to base its estimate of any of these variables, and believed that it was reasonable to assume that the great majority of legal entity customers that establish accounts at small institutions are more likely to be small businesses with simpler ownership structures (for example, a single legal entity directly owned by two individuals) that will result in one or two beneficial owners. In addition, FinCEN also believed that, since all covered financial institutions have been subject to CIP rules[177] for more than 10 years, and the proposed rule utilizes CIP rule procedures, small institutions would be able to leverage these procedures in complying with this requirement. As a result, in its certification FinCEN estimated that it would require, on average, 20 minutes to fulfill the beneficial ownership identification, verification and recordkeeping requirements in the proposal. Also, for purposes of its certification FinCEN had no direct data on the aggregate number of legal entity accounts opened per year by small financial institutions, and (based in part on an estimate it obtained from one very large financial institution of the legal entity accounts it opens per year) FinCEN estimated that small institutions would open at most 1.5 new accounts for legal entities per day, and probably fewer. However, because statistical data does not exist regarding either the average number of beneficial owners of legal entity customers of small institutions or how many such accounts they establish in any time period, FinCEN sought comment on these questions.

As a result of the outreach referred to above, FinCEN obtained some additional data on which to better estimate the additional costs at account opening. Because financial institutions are not currently required to collect beneficial ownership information, there is no way to estimate the average number of beneficial owners of legal entity customers of financial institutions, although FinCEN continues to believe that it is reasonable to assume that small financial institutions will generally have small businesses as customers, which are likely to have not more than two beneficial owners. Banks we surveyed estimated that it is likely to take an additional 10 to 15 minutes per beneficial owner. Assuming there would typically be two individuals identified as beneficial owners, for purposes of the IRFA FinCEN estimated the additional time to open a legal entity account between a low estimate of an additional 15 minutes and a high estimate of an additional 30 minutes to open a legal entity account. In its outreach FinCEN asked three small financial institutions the number of legal entity accounts they open each year. While financial institutions do not generally maintain information about the number of their legal entity customers, they typically maintain a database for their retail (*i.e.,* individual) customers, and another database for their customers that are businesses or organizations. A significant number of a financial institution's business or organization customers are sole proprietorships that are not legal entities subject to the proposed rule.[178] As a result, it is very difficult to estimate with any degree of precision the number of legal entity customers of a particular small financial institution that would be subject to the proposed rule. However, based on data obtained from FinCEN's outreach, and utilizing the wage assumptions in the draft RIA, we estimated for purposes of the IRFA that this requirement would result in a cost to a small bank of between approximately $2,000 and $4,000 per year at account opening.[179]

None of the small businesses that commented on the IRFA included an estimate of the amount of time to open a legal entity account; only one noted the number of such accounts it opens per year (70). As a result of the comments we received to the draft RIA from other commenters, FinCEN has increased the estimated time for financial institutions to open accounts, from a range of 15 to 30 minutes in the IRFA, to a range of 20 to 40 minutes. Based on opening 471 new accounts for legal entities and an average wage of $16.77 for "new account clerks," this would result in an annual cost to a small bank of $2,550 to $5,100. FinCEN also notes that, even within the universe of small entities, the costs could be expected to vary substantially. For example, for the small bank that responded to the IRFA and estimated that it opens 70 new accounts for business customers per year, the estimated costs would range from $380 to $760 per year.

(ii) *Training (Employee time).* In its certification FinCEN noted that financial institutions generally conduct periodic training of their employees for BSA compliance and that this new requirement would be included in that periodic training. Many commenters noted that it would be necessary to conduct additional training in order to comply with this requirement, although none gave any specific estimate of the cost. As a result FinCEN sought to determine this more specifically in its outreach. Based on the sampling it conducted it learned that financial institutions expect to train between one-third and two-thirds of their employees regarding this requirement. Assuming that a small financial institution has 125 employees and that the training would take one hour, and applying the wage assumptions used in the RIA, this would result in an estimated cost of between $1,250 and $2,500, depending on the percentage of employees trained, for the first year that the rule would be in effect.[180] The amount of necessary training would decrease thereafter.

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[176] The NPRM proposed to define beneficial owner as (1) each individual who owns, directly or indirectly, 25 percent or more of the equity interests of a legal entity, and (2) one individual with significant responsibility to control, manage, or direct the entity. Thus, it is possible that a legal entity could have up to five beneficial owners.

[177] *See* 31 CFR 1020.220, 1023.220, 1024.220, and 1026.220.

[178] According to data obtained from the IRS regarding tax returns, approximately 75 percent of all businesses filing tax returns are sole proprietorships.

[179] One small bank we surveyed reported that it opened 471 accounts for organizations in 2014. This number includes an unknown number of sole proprietorships that would not be subject to the rule, as well as 179 accounts for loan customers, for which the bank would typically identify the beneficial owner(s) in order to obtain personal guarantees. A second small bank we surveyed reported that it opened 333 accounts in 2014 for legal entities, which includes an unknown number of sole proprietorships, as well as 106 loan customers. A small credit union we surveyed opens 24 to 36 accounts for businesses per year, which includes an unknown number of sole proprietorships. FinCEN believes its estimated range of costs may be high because the calculation is based on the small bank that opened the greater number of legal entity accounts, assumes that none of the accounts reported were opened for sole proprietorships, and includes loan customers, for which the bank would generally already identify beneficial owners. The estimated cost is based on the bank-reported 471 new accounts per year, additional time at account opening of 15 to 30 minutes, and the average wage of $16.77 for the financial industry "new account clerks" reported by the Bureau of Labor Statistics. FinCEN believes that utilizing this number of new accounts is more appropriate than the 1.5 new accounts per day stated in the NPRM, since it is based on actual data from a small bank.

FinCEN did not receive any comments from small entities regarding the cost of developing and conducting the training. The estimates in the comments received from all financial institutions in response to the draft RIA generally fell within the estimated range in the IRFA, and therefore FinCEN is maintaining this estimate in this FRFA. FinCEN also notes that the estimate is almost certainly much greater than would be the actual case for most small credit unions. This is because FinCEN understands that approximately 3,000 small credit unions have five or fewer employees.[181] Training for an institution with five employees, based on the assumptions above, would cost much less than the $1,250 lower estimate above.

(iii) *Training (Developing and Conducting).* In addition, some commenters noted that FinCEN should account for the cost for the institution to develop and design the training. Although no small entities estimated the cost for this, an industry trade association stated that small banks would incur expenses of nearly $13,000 to develop and administer the training. While this seems plausible for institutions at the larger end of the small entity definition, it seems to be substantially greater than the costs that would be incurred for developing and conducting training for the smaller institutions, including those with five or fewer employees.

(iv) *Information Technology.* In its certification FinCEN noted that financial institutions periodically update their IT systems, and that small financial institutions typically outsource their IT requirements to vendors, which would incorporate the required modifications into the programs that they supply to small financial institutions at minimal additional cost. FinCEN discussed with vendors the changes that would result from the adoption of the proposed rule and the likely additional costs that would be charged to customers in order to achieve compliant systems. The vendors told FinCEN that they normally bear the costs of system upgrades necessary to maintain compliance required during the term of a contract, but some stated that the changes necessitated for compliance with the new requirements would be too costly to implement without increasing the charges to their customer financial institutions. The vendors also informed FinCEN that, until a rule were issued in final form, it would not be possible to determine how their systems would need to be modified, or to estimate the additional charges to their financial institution customers resulting from such changes.

In response to the RIA and IRFA, two commenters included estimates of the costs for IT upgrades that would be required to comply with the Rule, although neither were small entities. Given the lack of specific estimates for small entities, FinCEN is not able to include an estimate or range of estimates for this expense for the FRFA. FinCEN notes that one credit union with assets of $2.3 billion estimated the cost of IT enhancements to be $23,270, and another with assets of $2.8 billion estimated such costs at $11,500. Given that these institutions are several times larger than the largest small credit unions, it would seem that the IT upgrade costs for small entities could be expected to generally be less than $10,000.[182]

(v) *Revising Policies and Procedures.* In its certification FinCEN noted that covered financial institutions would need to revise their AML programs in order to comply with the proposed rule, but that since financial institutions routinely update this program it was not able to estimate the time or expense for updating AML programs for compliance with the final rule specifically. In response to the NPRM FinCEN did not receive any specific estimates for the cost for this activity, and no estimate was included in the preliminary RIA or IRFA. In response to the preliminary RIA and IRFA several financial institutions estimated the cost for such updates and revisions. Although none were small entities, a trade association stated that it surveyed a number of small banks and that they estimated that this would take, on average, 40 hours to complete. Based on the salary estimates used in the RIA, FinCEN estimates that this would cost, on average, $1,360 for a small entity.[183]

(vi) *Internal Controls.* FinCEN understands that the rule would result in additional costs for covered financial institutions for internal controls and audit functions, including for small entities, to determine that the financial institution is complying with the new requirements. However, FinCEN did not obtain sufficient input in response to either the NPRM or to the preliminary RIA and IRFA to enable it to estimate the likely amount of such costs, and therefore is not attempting to estimate this cost for purposes of the FRFA.

b. Customer Due Diligence Requirement

The final rule will also require that covered financial institutions include in their AML programs customer due diligence procedures, including understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile and conducting ongoing monitoring of these relationships to identify and report suspicious activities and, on a risk basis, to maintain and update customer information. FinCEN maintains that, because these are necessary measures that covered financial institutions must currently take in order to comply with existing requirements to detect and file suspicious activity reports,[184] they are implicit requirements and would not impose any new obligations, and therefore would have no material, measurable economic impact, on any small entities. FinCEN believes that proposing clear CDD requirements is the most effective means of clarifying, consolidating, and harmonizing expectations and practices across all covered financial institutions. Expressly stating the requirements facilitates the goal that financial institutions, regulators, and law enforcement all operate under the same set of clearly articulated principles.

Some commenters to the preliminary RIA and IRFA, including one small bank, stated that compliance with these requirements would necessitate purchasing tracking software that would cost thousands of dollars. FinCEN's response to this issue is discussed above under section 2 of this FRFA and in the Section-by-Section Analysis.

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[180] FinCEN believes that the estimated range of costs may be high because it is based on the small financial institution interviewed with the greatest number of employees. The cost calculation is based on a weighted average wage of $29.92 for NAICS codes 5221 (Depository Credit Intermediation), 5222 (Nondepository Credit Intermediation), 5223 (Activities Related to Credit Intermediation), and 5231 (Securities and Commodity Contracts Intermediation and Brokerage), reported in the May 2014 Bureau of Labor Statistics National Occupational and Wage Estimates.

[181] Comment letter from Credit Union National Association, January 22, 2016, page 4.

[182] In the course of FinCEN's outreach mentioned above following the close of the NPRM comment period, one small credit union that FinCEN contacted estimated IT upgrade costs of $50,000 to $70,000. Based on the estimates referred to above, this estimate appears to be an aberration and not a basis for industry-wide estimates.

[183] For estimating this cost we use wage data from the May 2014 BLS Occupational Employment Statistics for "compliance officers" working in business establishments in sectors having one of the four-digit North American Industry Classification System (NAICS) codes mentioned in footnote 116; the average hourly wage for these compliance officers is $34.03.

[184] *See, e.g.,* 31 CFR 1020.320.

5. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on the Small Entities Was Rejected

FinCEN considered a number of alternatives to the proposed rule. These included exempting small financial institutions below a certain asset or legal entity customer threshold from the requirements, as well as utilizing a lower (*e.g.*, 10 percent) or higher (*e.g.*, 50 percent) threshold for the minimum level of equity ownership for the definition of beneficial owner. As regards exempting financial institutions below a specified amount of assets or of legal entity accounts, FinCEN has determined that identifying the beneficial owner of a financial institution's legal entity customers and verifying that identity is a necessary part of an effective AML program. Were FinCEN to exempt small entities from this requirement, or entities that establish fewer than a limited number of accounts for legal entities, those financial institutions would be at greater risk of abuse by money launderers and other financial criminals, as criminals would identify institutions without this requirement. FinCEN also has considered as alternatives establishing a different threshold for ownership of equity interests in the definition of beneficial ownership. For example, if the ownership threshold were reduced to include each individual owning 10 percent or more of the equity interests of a legal entity, a financial institution would potentially have to identify more individuals as beneficial owners, which would result in greater onboarding time and expense in such cases, with commensurately greater available information. Alternatively, should the ownership threshold be increased to owners of 50 percent or more of the equity interests, financial institutions would be required to identify and verify the identity of up to three individuals rather than five, thereby reducing marginally the cost of the initial onboarding time. However, this change would not impact the training or IT costs and therefore would not substantially reduce the overall costs of the rule and also would provide less useful information. FinCEN has also considered applying the beneficial ownership requirement retroactively and requiring that financial institutions identify the beneficial owners of all their existing accounts as well as new accounts. While this would produce substantially larger benefits because it would make available beneficial ownership information for far more customers, it would also result in a significantly greater burden for financial institutions. After considering all the alternatives FinCEN has concluded that an ownership threshold of 25 percent is appropriate to maximize the benefits of the requirement while minimizing the burden.

While FinCEN did not determine to adopt one of the alternatives it considered, it did take a number of steps in the final rule in response to comments to minimize the economic impact on small entities subject to the rule. These include clarifying the definition of "legal entity customer," extending the transition period from one year to two years; eliminating the requirement that financial institutions use the Certification Form to obtain the beneficial ownership information; expanding the categories of excluded legal entities not subject to the requirement; simplifying the requirements related to the charity and nonprofit exemption; and as noted above, clarifying that financial institutions are not required to update beneficial ownership information on a periodic or ongoing basis, but only on an event-driven basis, when in the course of their normal monitoring they detect information about the customer that may be relevant to assessing the risk posed by the customer. Such information could include a change in the customer's beneficial ownership. This is explained more fully in the Section-by-Section Analysis above.

D. Paperwork Reduction Act Analysis

The new recordkeeping requirement contained in this rule (31 CFR 1010.230) has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, under control number 1506–0070. The PRA imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

In summary, the rule would require covered financial institutions[185] to collect, and to maintain records of, the information used to identify and verify the identity of the names of the beneficial owners[186] of their legal entity customers (other than those that are excluded from the definition).[187]

Under the proposed and final rule, covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of new accounts[188] opened by legal entity customers. They also must maintain a record of the identifying information obtained, and a description of any document relied on, of any non-documentary methods and the results of any measures undertaken, and of the resolution of each substantive discrepancy. Under the proposed rule covered financial institutions were required to obtain from each legal entity customer a certification, in a prescribed form, containing the identifying information required. In the final rule the institution may obtain the information either by using the Certification Form or by any other means that it obtains information from the customer.

We received 141 comments in response to the proposed rule addressing many issues. Many commenters stated that the rule would be much more costly to implement than as estimated in the proposal for several reasons. The largest cost that commenters stated would be incurred to implement the rule would be those needed to upgrade IT systems. Only one commenter referred specifically to the proposed rule understating the PRA requirements. As a result of the comments addressing the cost of implementing the proposal, Treasury conducted and published a preliminary RIA and issued an IRFA. FinCEN received 38 comments addressing these documents, which are summarized above. As a result of these comments FinCEN revised its RIA and IRFA and issued a final RIA and FRFA, each of which is set forth above.

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[185] Banks, brokers and dealers in securities, mutual funds, and futures commission merchants and introducing brokers.

[186] Beneficial owners include any individual who, directly or indirectly, owns 25 percent or more of the equity interests of a legal entity, and one individual with significant responsibility to control, manage, or direct a legal entity customer.

[187] This requirement applies to accounts established for legal entities. A legal entity generally includes a corporation, limited liability company, or other entity that is created by a filing of a public document with a Secretary of State or similar office, a general partnership, or any similar entity formed under the laws of a foreign country.

[188] New accounts are those opened after the Applicability Date, which is two years after the date of publication.

FinCEN has reconsidered the PRA burden estimates published in the proposal, based on the comments received to the proposal and the preliminary RIA and IRFA, and publishes below its revised estimates. The revised estimates are a result of information that FinCEN obtained as a result of the comments received, and particularly as a result of developing the RIA. Specifically, FinCEN increased its estimate of the time to develop and maintain beneficial ownership identification procedures, from one hour to 56 hours (40 for small entities), and its estimate of the time for identification, verification, and review and recordkeeping of the beneficial owners of legal entity customers, from 20 minutes per customer to a range of 20–40 minutes per customer.

Affected public: Certain financial institutions, and businesses or other for-profit and not-for-profit entities.

OMB Control Number: 1506–0070.

Frequency: As required.

Estimated Burden:

a. Develop and maintain beneficial ownership identification procedures: 56 hours.[189]

b. Customer identification, verification, and review and recordkeeping of the beneficial ownership information: A range of 20 to 40 minutes per legal entity customer.

Estimated Number of Respondents: 28,917.[190]

Estimated Total Annual Responses: 10,843,875.[191]

Estimated Recordkeeping Burden: 7,041,289 hours.[192]

The numbers presented assume that the number of account openings in 2013 is representative for an average yearly establishment of accounts for new legal entities. Records are required to be retained pursuant to the beneficial ownership requirement for five years. Comments concerning the accuracy of this burden estimate and suggestions from reducing this burden should be directed to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Act Project (1506), Washington, DC 20503.

E. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. FinCEN believes that the RIA provides the analysis required by the Unfunded Mandates Act.

List of Subjects in 31 CFR Parts 1010, 1020, 1023, 1024, and 1026

Administrative practice and procedure, Banks, Banking, Brokers, Currency, Federal home loan banks, Foreign banking, Foreign currencies, Gambling, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Authority and Issuance

For the reasons set forth in the preamble, chapter X of title 31 of the Code of Federal Regulations is amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307.

■ 2. Add § 1010.230 to read as follows:

§ 1010.230 Beneficial ownership requirements for legal entity customers.

(a) *In general.* Covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their anti-money laundering compliance program required under 31 U.S.C. 5318(h) and its implementing regulations.

(b) *Identification and verification.* With respect to legal entity customers, the covered financial institution's customer due diligence procedures shall enable the institution to:

(1) Identify the beneficial owner(s) of each legal entity customer at the time a new account is opened, unless the customer is otherwise excluded pursuant to paragraph (e) of this section or the account is exempted pursuant to paragraph (h) of this section. A covered financial institution may accomplish this either by obtaining a certification in the form of appendix A of this section from the individual opening the account on behalf of the legal entity customer, or by obtaining from the individual the information required by the form by another means, provided the individual certifies, to the best of the individual's knowledge, the accuracy of the information; and

(2) Verify the identity of each beneficial owner identified to the covered financial institution, according to risk-based procedures to the extent reasonable and practicable. At a minimum, these procedures must contain the elements required for verifying the identity of customers that are individuals under § 1020.220(a)(2) of this chapter (for banks); § 1023.220(a)(2) of this chapter (for brokers or dealers in securities); § 1024.220(a)(2) of this chapter (for mutual funds); or § 1026.220(a)(2) of this chapter (for futures commission merchants or introducing brokers in commodities); provided, that in the case of documentary verification, the financial institution may use photocopies or other reproductions of the documents listed in paragraph (a)(2)(ii)(A)(*1*) of § 1020.220 of this chapter (for banks); § 1023.220 of this chapter (for brokers or dealers in securities); § 1024.220 of this chapter (for mutual funds); or § 1026.220 of this chapter (for futures commission merchants or introducing brokers in commodities). A covered financial institution may rely on the information supplied by the legal entity customer regarding the identity of its beneficial owner or owners, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information.

(c) *Account.* For purposes of this section, *account* has the meaning set forth in § 1020.100(a) of this chapter (for banks); § 1023.100(a) of this chapter (for brokers or dealers in securities); § 1024.100(a) of this chapter (for mutual funds); and § 1026.100(a) of this chapter (for futures commission merchants or introducing brokers in commodities).

(d) *Beneficial owner.* For purposes of this section, *beneficial owner* means each of the following:

(1) Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer; and

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[189] A burden of 56 hours to develop the initial procedures is recognized (40 hours for small entities). Once developed, an annual burden of 20 minutes is recognized for maintenance.

[190] This includes depository institutions (12,513), broker-dealers in securities (4,269), futures commission merchants (101), introducing brokers in commodities (1,323), and open-end mutual funds (10,711), each as defined under the BSA. These figures represent the total number of entities that would be subject to the requirements in the final rule.

[191] Based on initial research, each covered financial institution will open, on average, 1.5 new legal entity accounts per business day. There are 250 business days per year.

[192] 10,843,875 × 30 minutes per account established ÷ 60 minutes per hour = 5,421,937 hours (plus development time of 1,619,352 hours for a total of 7,041,289 hours in the first year).

(2) A single individual with significant responsibility to control, manage, or direct a legal entity customer, including:

(i) An executive officer or senior manager (*e.g.*, a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or

(ii) Any other individual who regularly performs similar functions.

(3) If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner for purposes of paragraph (d)(1) of this section shall mean the trustee. If an entity listed in paragraph (e)(2) of this section owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, no individual need be identified for purposes of paragraph (d)(1) of this section with respect to that entity's interests.

Note to paragraph (d). The number of individuals that satisfy the definition of "beneficial owner," and therefore must be identified and verified pursuant to this section, may vary. Under paragraph (d)(1) of this section, depending on the factual circumstances, up to four individuals may need to be identified. Under paragraph (d)(2) of this section, only one individual must be identified. It is possible that in some circumstances the same person or persons might be identified pursuant to paragraphs (d)(1) and (2) of this section. A covered financial institution may also identify additional individuals as part of its customer due diligence if it deems appropriate on the basis of risk.

(e) *Legal entity customer.* For the purposes of this section:

(1) *Legal entity customer* means a corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account.

(2) *Legal entity customer* does not include:

(i) A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator;

(ii) A person described in § 1020.315(b)(2) through (5) of this chapter;

(iii) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 or that is required to file reports under section 15(d) of that Act;

(iv) An investment company, as defined in section 3 of the Investment Company Act of 1940, that is registered with the Securities and Exchange Commission under that Act;

(v) An investment adviser, as defined in section 202(a)(11) of the Investment Advisers Act of 1940, that is registered with the Securities and Exchange Commission under that Act;

(vi) An exchange or clearing agency, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 6 or 17A of that Act;

(vii) Any other entity registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934;

(viii) A registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant, each as defined in section 1a of the Commodity Exchange Act, that is registered with the Commodity Futures Trading Commission;

(ix) A public accounting firm registered under section 102 of the Sarbanes–Oxley Act;

(x) A bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) or savings and loan holding company, as defined in section 10(n) of the Home Owners' Loan Act (12 U.S.C 1467a(n));

(xi) A pooled investment vehicle that is operated or advised by a financial institution excluded under paragraph (e)(2) of this section;

(xii) An insurance company that is regulated by a State;

(xiii) A financial market utility designated by the Financial Stability Oversight Council under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010;

(xiv) A foreign financial institution established in a jurisdiction where the regulator of such institution maintains beneficial ownership information regarding such institution;

(xv) A non-U.S. governmental department, agency or political subdivision that engages only in governmental rather than commercial activities; and

(xvi) Any legal entity only to the extent that it opens a private banking account subject to § 1010.620 of this chapter.

(3) The following legal entity customers are subject only to the control prong of the beneficial ownership requirement:

(i) A pooled investment vehicle that is operated or advised by a financial institution not excluded under paragraph (e)(2) of this section; and

(ii) Any legal entity that is established as a nonprofit corporation or similar entity and has filed its organizational documents with the appropriate State authority as necessary.

(f) *Covered financial institution.* For the purposes of this section, *covered financial institution* has the meaning set forth in § 1010.605(e)(1) of this chapter.

(g) *New account.* For the purposes of this section, *new account* means each account opened at a covered financial institution by a legal entity customer on or after the applicability date.

(h) *Exemptions.* (1) Covered financial institutions are exempt from the requirements to identify and verify the identity of the beneficial owner(s) set forth in paragraphs (a) and (b)(1) and (2) of this section only to the extent the financial institution opens an account for a legal entity customer that is:

(i) At the point-of-sale to provide credit products, including commercial private label credit cards, solely for the purchase of retail goods and/or services at these retailers, up to a limit of $50,000;

(ii) To finance the purchase of postage and for which payments are remitted directly by the financial institution to the provider of the postage products;

(iii) To finance insurance premiums and for which payments are remitted directly by the financial institution to the insurance provider or broker;

(iv) To finance the purchase or leasing of equipment and for which payments are remitted directly by the financial institution to the vendor or lessor of this equipment.

(2) *Limitations on Exemptions.* (i) The exemptions identified in paragraphs (h)(1)(ii) through (iv) of this section do not apply to transaction accounts through which a legal entity customer can make payments to, or receive payments from, third parties.

(ii) If there is the possibility of a cash refund on the account activity identified in paragraphs (h)(1)(ii) through (iv) of this section, then beneficial ownership of the legal entity customer must be identified and verified by the financial institution as required by this section, either at the time of initial remittance, or at the time such refund occurs.

(i) *Recordkeeping.* A covered financial institution must establish procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(1) *Required records.* At a minimum the record must include:

(i) For identification, any identifying information obtained by the covered financial institution pursuant to paragraph (b) of this section, including without limitation the certification (if obtained); and

(ii) For verification, a description of any document relied on (noting the type, any identification number, place of issuance and, if any, date of issuance and expiration), of any non-documentary methods and the results of any measures undertaken, and of the resolution of each substantive discrepancy.

(2) *Retention of records.* A covered financial institution must retain the records made under paragraph (i)(1)(i) of this section for five years after the date the account is closed, and the records made under paragraph (i)(1)(ii) of this section for five years after the record is made.

(j) *Reliance on another financial institution.* A covered financial institution may rely on the performance by another financial institution (including an affiliate) of the requirements of this section with respect to any legal entity customer of the covered financial institution that is opening, or has opened, an account or has established a similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(1) Such reliance is reasonable under the circumstances;

(2) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(3) The other financial institution enters into a contract requiring it to certify annually to the covered financial institution that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the covered financial institution's procedures to comply with the requirements of this section.

BILLING CODE P

APPENDIX A to § 1010.230 -- CERTIFICATION REGARDING BENEFICIAL OWNERS OF LEGAL ENTITY CUSTOMERS

I. GENERAL INSTRUCTIONS

What is this form?

To help the government fight financial crime, Federal regulation requires certain financial institutions to obtain, verify, and record information about the beneficial owners of legal entity customers. Legal entities can be abused to disguise involvement in terrorist financing, money laundering, tax evasion, corruption, fraud, and other financial crimes. Requiring the disclosure of key individuals who own or control a legal entity (i.e., the beneficial owners) helps law enforcement investigate and prosecute these crimes.

Who has to complete this form?

This form must be completed by the person opening a new account on behalf of a legal entity with any of the following U.S. financial institutions: (i) a bank or credit union; (ii) a broker or dealer in securities; (iii) a mutual fund; (iv) a futures commission merchant; or (v) an introducing broker in commodities.

For the purposes of this form, a **legal entity** includes a corporation, limited liability company, or other entity that is created by a filing of a public document with a Secretary of State or similar office, a general partnership, and any similar business entity formed in the United States or a foreign country. **Legal entity** does not include sole proprietorships, unincorporated associations, or natural persons opening accounts on their own behalf.

What information do I have to provide?

This form requires you to provide the name, address, date of birth and Social Security number (or passport number or other similar information, in the case of foreign persons) for the following individuals (*i.e.*, the **beneficial owners**):

(i) Each individual, if any, who owns, directly or indirectly, 25 percent or more of the equity interests of the legal entity customer (*e.g.*, each natural person that owns 25 percent or more of the shares of a corporation); **and**

(ii) An individual with significant responsibility for managing the legal entity customer (*e.g.*, a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer).

The number of individuals that satisfy this definition of "beneficial owner" may vary. Under section (i), depending on the factual circumstances, up to four individuals (but as few as zero) may need to be identified. Regardless of the number of individuals identified under section (i), you must provide the identifying information of one individual under section (ii). It is possible that in some circumstances the same individual might be identified under both sections (*e.g.*, the President of Acme, Inc. who also holds a 30% equity interest). Thus, a completed form will contain the identifying information of at least one individual (under section (ii)), and up to five individuals (*i.e.*, one individual under section (ii) and four 25 percent equity holders under section (i)).

The financial institution may also ask to see a copy of a driver's license or other identifying document for each beneficial owner listed on this form.

II. CERTIFICATION OF BENEFICIAL OWNER(S)

Persons opening an account on behalf of a legal entity must provide the following information:

a. Name and Title of Natural Person Opening Account:

____

b. Name and Address of Legal Entity for Which the Account is Being Opened:

____

c. The following information for *each* *individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity listed above:*

Name	Date of Birth	Address (Residential or Business Street	*For U.S. Persons:* Social Security	*For Foreign Persons*: Passport Number and

		Address)	Number	Country of Issuance, or other similar identification number[1]

(If no individual meets this definition, please write "Not Applicable.")

d. *The following information for* *one* *individual with significant responsibility for managing the legal entity listed above, such as:*

☐ *An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or*

☐ *Any other individual who regularly performs similar functions.*

(If appropriate, an individual listed under section (c) above may also be listed in this section (d)).

Name/Title	Date of Birth	Address (Residential or Business Street Address)	*For U.S. Persons:* Social Security Number	*For Foreign Persons*: Passport Number and Country of Issuance, or other similar identification number[1]

I, ________________ (*name of natural person opening account*), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: ______________________________ Date: ________________

---

[1] In lieu of a passport number, foreign persons may also provide an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

Legal Entity Identifier ______________ (Optional)

PART 1020—RULES FOR BANKS

■ 3. The authority citation for part 1020 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307.

■ 4. Revise § 1020.210 to read as follows:

§ 1020.210 Anti-money laundering program requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.

A financial institution regulated by a Federal functional regulator that is not subject to the regulations of a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if the financial institution implements and maintains an anti-money laundering program that:

(a) Complies with the requirements of §§ 1010.610 and 1010.620 of this chapter;

(b) Includes, at a minimum:

(1) A system of internal controls to assure ongoing compliance;

(2) Independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) Designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance;

(4) Training for appropriate personnel; and

(5) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter); and

(c) Complies with the regulation of its Federal functional regulator governing such programs.

PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

■ 5. The authority citation for part 1023 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307.

■ 6. Revise § 1023.210 to read as follows:

§ 1023.210 Anti-money laundering program requirements for brokers or dealers in securities.

A broker or dealer in securities shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if the broker-dealer implements and maintains a written anti-money laundering program approved by senior management that:

(a) Complies with the requirements of §§ 1010.610 and 1010.620 of this chapter and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs;

(b) Includes, at a minimum:

(1) The establishment and implementation of policies, procedures, and internal controls reasonably designed to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(2) Independent testing for compliance to be conducted by the broker-dealer's personnel or by a qualified outside party;

(3) Designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the program;

(4) Ongoing training for appropriate persons; and

(5) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter); and

(c) Complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; provided that the rules, regulations, or requirements of the self-regulatory organization governing such programs have been made effective under the Securities Exchange Act of 1934 by the appropriate Federal functional regulator in consultation with FinCEN.

PART 1024—RULES FOR MUTUAL FUNDS

■ 7. The authority citation for part 1024 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307.

■ 8. Revise § 1024.210 to read as follows:

§ 1024.210 Anti-money laundering program requirements for mutual funds.

(a) Effective July 24, 2002, each mutual fund shall develop and implement a written anti-money laundering program reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the

Department of the Treasury. Each mutual fund's anti-money laundering program must be approved in writing by its board of directors or trustees. A mutual fund shall make its anti-money laundering program available for inspection by the U.S. Securities and Exchange Commission.

(b) The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and implementing regulations thereunder;

(2) Provide for independent testing for compliance to be conducted by the mutual fund's personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program;

(4) Implement appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(4)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter).

PART 1026—RULES FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

■ 9. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314 Pub. L. 107–56, 115 Stat. 307.

■ 10. Revise § 1026.210 to read as follows:

§ 1026.210 Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities.

A futures commission merchant and an introducing broker in commodities shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if the futures commission merchant or introducing broker in commodities implements and maintains a written anti-money laundering program approved by senior management that:

(a) Complies with the requirements of §§ 1010.610 and 1010.620 of this chapter and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs;

(b) Includes, at a minimum:

(1) The establishment and implementation of policies, procedures, and internal controls reasonably designed to prevent the financial institution from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(2) Independent testing for compliance to be conducted by the futures commission merchant or introducing broker in commodities' personnel or by a qualified outside party;

(3) Designation of an individual or individuals responsible for implementing and monitoring the operations and internal controls of the program;

(4) Ongoing training for appropriate persons;

(5) Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. For purposes of this paragraph (b)(5)(ii), customer information shall include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter); and

(c) Complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs, provided that the rules, regulations, or requirements of the self-regulatory organization governing such programs have been made effective under the Commodity Exchange Act by the appropriate Federal functional regulator in consultation with FinCEN.

Dated: May 2, 2016.

David R. Pearl,

Executive Secretary, United States Department of the Treasury.

[FR Doc. 2016–10567 Filed 5–6–16; 8:45 am]

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FEDERAL REGISTER

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The President

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Wednesday, May 11, 2016

Presidential Documents

Title 3—

The President

Proclamation 9443 of May 6, 2016

National Women's Health Week, 2016

By the President of the United States of America

A Proclamation

Throughout our history, women have contributed to shaping the course of our country—and with each generation, they have helped affirm the timeless belief that everyone deserves an equal shot at reaching for our Nation's promise. We have achieved great progress in tearing down barriers that deny women equal opportunities, but we still have more to do to ensure that health care is a right for every American, regardless of sex or gender. This week, we recommit to ensuring equal access to high-quality care for women and to building a more prosperous, healthy future.

Ensuring women can live full and healthy lives is vital, and central to that mission is improving the quality, affordability, and accessibility of health care for women. Because of the Affordable Care Act (ACA), insurance companies can no longer charge women more than men or use preexisting conditions—including pregnancy—to deny them the care they need.

Twenty million Americans have gained health insurance since the passage of the ACA, including roughly 9.5 million women since the first open enrollment period in 2013. Under the Act, annual limits on out-of-pocket spending for essential health benefits have been established, and lifetime and annual limits on insurance coverage have been eliminated. For 55 million women, critical preventive services, including well-woman visits, certain cancer screenings, and domestic violence screenings and counseling sessions, are now guaranteed with no out-of-pocket costs. Access to preventive care can help identify and diagnose conditions early, benefiting countless women across our Nation.

The important decisions that affect a woman's health should be left to her alone. Today, efforts around our country to weaken access to contraception and to limit a woman's right to choose threaten to reverse decades of hard-won progress. It is crucial we reject actions that obstruct women's access to sexual and reproductive health services and stand firm in protecting their access to safe, affordable health care and the constitutional right to privacy, including the right to reproductive freedom.

National Women's Health Week is an opportunity to refocus our commitment to advancing women's health and ensuring a healthy future for all our Nation's women and girls. To learn more about women's health, and for health care options available for women and girls, visit www.WomensHealth.gov or www.GirlsHealth.gov.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 8 through May 14, 2016, as National Women's Health Week. I encourage all Americans to celebrate the progress we have made in protecting women's health and to promote awareness, preventive care, and educational activities that improve the health of all women.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–11298
Filed 5–10–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Proclamation 9444 of May 6, 2016

Mother's Day, 2016

By the President of the United States of America

A Proclamation

On Mother's Day, we celebrate those who are the first to welcome us into the world. Performing the most important work there is, mothers—biological, foster, or adoptive—are our first role models and earliest motivators. They balance enormous responsibilities and shape who we become as adults, their lessons guiding us throughout life. Regardless of sexual orientation, gender identity, or marital status, mothers have always moved our Nation forward and remained steadfast in their pursuit of a better and brighter future for their children.

Caring and loving without condition, even in our darkest moments, mothers put the interests of their kids ahead of their own. They are inspiring embodiments of strength and determined drivers of progress, and through their example, our youth learn the values of grace, empathy, and kindness. For generations, mothers have led the charge toward a freer, more inclusive country—embracing the task of ensuring our Nation upholds its highest ideals so that they, and America's daughters, know the same opportunities as America's fathers and sons.

Our country's mothers deserve our unwavering support—at home, in the workplace, and throughout our communities. I am committed to empowering working mothers so they do not have to choose between caring for their family and earning their paycheck, and I will continue fighting to ensure those who choose to become mothers are not financially punished for doing so. My Administration has pushed to expand child care and strengthen paid leave, including maternity leave. We will also keep working to close the gender pay gap—a disparity that is contrary to our values as Americans, limits the scope of mothers' futures, and affects those they provide for. And earlier this year, we launched an effort to help low-income mothers and families afford diapers—a basic necessity for babies—by bringing together online retailers, diaper manufacturers, and nonprofits to reduce the high cost of diapers.

Each of us is the son or daughter of a mother. Today, let us pay these extraordinary women the admiration and respect they deserve. And each day, let us thank them for all they have done for us, remember those whose spirits remain with us, and support those who take on the awesome mantle of motherhood.

The Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as "Mother's Day" and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 8, 2016, as Mother's Day. I urge all Americans to express love and gratitude to mothers everywhere, and I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–11299
Filed 5–10–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Executive Order 13727 of May 6, 2016

Facilitation of a Presidential Transition

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7301 of title 5, United States Code, and the Presidential Transition Act of 1963, as amended, and to assist the Presidential transition, it is hereby ordered as follows:

Section 1. *Policy.* The peaceful transition of power has long been a hallmark of American democracy. It is the policy of the United States to undertake all reasonable efforts to ensure that Presidential transitions are well-coordinated and effective, without regard to party affiliation.

Sec. 2. *Establishment of the White House Transition Coordinating Council.* (a) To facilitate the Presidential transition, including assisting and supporting the transition efforts of the transition teams of eligible candidates, there is established a White House Transition Coordinating Council.

(b) The White House Transition Coordinating Council shall be composed of the following officials or their designees:

(i) Assistant to the President and Chief of Staff, who shall serve as Chair;

(ii) Assistant to the President and Deputy Chief of Staff for Operations, who shall serve as Vice Chair;

(iii) Assistant to the President and Deputy Chief of Staff for Implementation;

(iv) Counsel to the President;

(v) Assistant to the President for Presidential Personnel;

(vi) Assistant to the President for National Security Affairs;

(vii) Assistant to the President for Homeland Security and Counterterrorism;

(viii) Assistant to the President for Economic Policy and Director, National Economic Council;

(ix) Director of National Intelligence;

(x) Director of the Office of Management and Budget;

(xi) Administrator of General Services;

(xii) Federal Transition Coordinator;

(xiii) the transition representative for each eligible candidate, who shall serve in an advisory capacity; and

(xiv) any other executive branch official the President determines appropriate.

(c) The White House Transition Coordinating Council shall:

(i) provide guidance to executive departments and agencies (agencies) and the Federal Transition Coordinator regarding preparations for the Presidential transition, including succession planning and preparation of briefing materials;

(ii) facilitate communication and information sharing between the transition representatives of eligible candidates and senior employees in agencies and the Executive Office of the President, including the provision of information relevant to facilitating the personnel aspects of a Presidential transition and such other information that, in the Council's judgment, is useful and appropriate, as long as providing such information is not otherwise prohibited by law; and

(iii) prepare and host interagency emergency preparedness and response exercises.

(d) In order to obtain a wide range of facts and information on prior transitions and best practices, the White House Transition Coordinating Council, its members, or their designees may seek information from private individuals, including individuals in outside organizations, who have significant experience or expertise in Presidential transitions. The White House Transition Coordinating Council, its members, or their designees shall endeavor to obtain such facts and information from individuals representing a range of bipartisan or nonpartisan viewpoints. If the White House Transition Coordinating Council, its members, or their designees find it necessary to seek advice from private individuals or outside organizations, such counsel should be sought in a manner that seeks individual advice and does not involve collective judgment or deliberation.

Sec. 3. *Establishment of the Agency Transition Directors Council.* (a) To implement the guidance provided by the White House Transition Coordinating Council and to coordinate transition activities across agencies, there is established an Agency Transition Directors Council.

(b) The Agency Transition Directors Council shall be composed of the following officials or their designees:

(i) Federal Transition Coordinator, who shall serve as Co-Chair;

(ii) Deputy Director for Management of the Office of Management and Budget, who shall serve as Co-Chair;

(iii) a senior career representative from each agency described in section 901(b)(1) of title 31, United States Code, the Office of Personnel Management, the Office of Government Ethics, and the National Archives and Records Administration whose responsibilities include leading Presidential transition efforts within the agency;

(iv) during a year in which a Presidential election will be held, a transition representative for each eligible candidate, who shall serve in an advisory capacity;

(v) a senior career representative from any other agency determined by the Co-Chairs to be an agency that has significant responsibilities relating to the Presidential transition process; and

(vi) other senior employees serving in the Executive Office of the President, as determined by the President.

(c) The Agency Transition Directors Council shall:

(i) ensure the Federal Government has an integrated strategy for addressing interagency challenges and responsibilities around Presidential transitions and turnover of non-career appointees;

(ii) coordinate transition activities among the Executive Office of the President, agencies, and the transition team of eligible candidates and the President-elect and Vice-President-elect;

(iii) draw on guidance provided by the White House Transition Coordinating Council and lessons learned from previous Presidential transitions in carrying out its duties;

(iv) assist the Federal Transition Coordinator in identifying and carrying out his or her responsibilities relating to a Presidential transition;

(v) provide guidance to agencies in gathering briefing materials and information relating to the Presidential transition that may be requested by eligible candidates;

(vi) ensure materials and information described in subparagraph (v) of this subsection are prepared not later than November 1 of the year during which a Presidential election is held;

(vii) ensure agencies adequately prepare career employees who are designated to fill non-career positions during a Presidential transition; and

(viii) consult with the President's Management Council, or any successor thereto, in carrying out its duties.

(d) The Agency Transition Directors Council shall meet:

(i) subject to subparagraph (ii) of this subsection, not less than once per year; and

(ii) during the period beginning on the date that is 6 months before a Presidential election and ending on the date on which the President-elect is inaugurated, on a regular basis as necessary to carry out its duties and authorities.

Sec. 4. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) The terms "eligible candidate," "Federal Transition Coordinator," and "Presidential election" shall have the same meaning as those terms used in the Presidential Transition Act of 1963, as amended. The term "President's Management Council" shall have the same meaning as that term is used in the Presidential Memorandum of July 11, 2001.

(d) This order is intended only to facilitate the transition and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
May 6, 2016.

[FR Doc. 2016–11300
Filed 5–10–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Notice of May 9, 2016

Continuation of the National Emergency With Respect to the Central African Republic

On May 12, 2014, by Executive Order 13667, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to the Central African Republic, which has been marked by a breakdown of law and order, intersectarian tension, widespread violence and atrocities, and the pervasive, often forced recruitment and use of child soldiers, and which threatens the peace, security, or stability of the Central African Republic and neighboring states.

The situation in and in relation to the Central African Republic continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on May 12, 2014, to deal with that threat must continue in effect beyond May 12, 2016. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13667.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
May 9, 2016.

[FR Doc. 2016–11302
Filed 5–10–16; 11:15 am]
Billing code 3295–F6–P

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